United States Court of Appeals

for the Minth Circuit

MORRISON-KNUDSEN, INC., HENRY J. KAI-SER, MACCO CORPORATION and B. PE-RINI & SONS, d/b/a Kings River Constructors, Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD, Respondent.

and

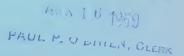
NATIONAL LABOR RELATIONS BOARD, Petitioner,

VS.

MORRISON-KNUDSEN, INC., HENRY J. KAI-SER, MACCO CORPORATION and B. PE-RINI & SONS, d/b/a Kings River Constructors, Respondents.

Transcript of Record

Petition to Review and Petition to Enforce Order of the National Labor Relations Board





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT 1-E

United States of America Before the National Labor Relations Board

Case No. 20-CA-1288

MORRISON - KNUDSEN, INC., HENRY J. KAISER, and B. PERINI & SONS, d/b/a KINGS RIVER CONSTRUCTORS, and M. E. TUTTLE, An Individual.

COMPLAINT AND NOTICE OF HEARING

It having been charged by M. E. Tuttle, an individual, (herein called Tuttle), that Morrison-Knudsen, Inc., Henry J. Kaiser, and B. Perini & Sons, d/b/a Kings River Constructors (herein called Employer), has engaged in, and is now engaging in unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, (herein called the Act), the General Counsel of the National Labor Relations Board, (herein called the Board) on behalf of the Board, by the undersigned Acting Regional Director for the Twentieth Region, hereby issues this Complaint and Notice of Hearing, pursuant to the provisions of Section 10(b) of the Act, and Section 102.15 of the Board's Rules and Regulations, Series 6, as amended.

General Counsel's Exhibit 1-E—(Continued)

I.

On or about May 9, 1957, the above charge was duly served on the Employer, and on or about June 7, 1957, a first amended charge was duly served on the Employer.

II.

Morrison-Knudsen, Inc. (a Delaware corporation), Henry J. Kaiser (a Nevada corporation), and B. Perini & Sons (a California corporation), are, and were at all times material herein jointly engaged in a venture under the name and title of Kings River Constructors, for the construction of a power house pursuant to a contract with the Pacific Gas and Electric Company of California on the Kings River in the State of California. Total cost of said construction will be in excess of \$1,500,000.

The Employer, during the calendar year ending December 31, 1956, made total purchases of products and supplies received directly from outside the state in excess of \$500,000.

Morrison-Knudsen, Inc., Henry J. Kaiser, and B. Perini & Sons, the three companies engaged in the joint venture known as Kings River Constructors, did each receive during the calendar year ending December 31, 1956, total gross receipts from construction projects outside the State of California in excess of \$50,000, each of the said corporations is part of a multi-state enterprise, and the total receipts from projects outside the state by each such multi-state enterprise during the aforesaid calendar year are in excess of \$250,000.

General Counsel's Exhibit 1-E—(Continued)

III.

Respondent Employer is, and at all times referred to herein has been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

IV.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, (herein called the Union) is a labor organization within the meaning of Section 2(5) of the Act.

∇ .

Commencing on or about February 23, 1957 and at various times thereafter, the Employer, by and through its representatives Bert Perkins, J. T. Wolcott, and John E. Atkins, advised Tuttle that a job was available or would be available at Employer's Black Rock project if Tuttle could obtain work clearances from the Union.

Thereafter Tuttle endeavored to obtain such clearances from the Union for work at the Black Rock project, but such clearances were at all times denied to him by the Union.

The Employer at all times declined to employ Tuttle on any job at the Black Rock project without such clearances from the Union.

VI.

By the acts set forth in paragraph V, above, the Employer did discriminate, and is now discriminating against Tuttle in regard to his hire, tenure, General Counsel's Exhibit 1-E—(Continued) terms and conditions of employment, thereby encouraging membership in the Union, and did thereby engage in, and is now engaging in unfair labor practices within the meaning of Section 8 (a)(3) of the Act.

VII.

By the acts set forth in paragraph V, above, the Employer did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Please Take Notice that on the 24th day of February, 1958, at 10 o'clock in the forenoon in the Council Chambers of the City Hall, Fresno, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that, pursuant to Section 102.20 of the Board's Rules and Regulations, you shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of a verified answer to said Complaint within ten (10) days from the service thereof, and that unless you do so all of the allegations in the

General Counsel's Exhibit 1-E—(Continued) Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Wherefore, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for the Twentieth Region, on this 27th day of December, 1957, issues this Complaint and Notice of Hearing against Morrison-Knudsen, Inc., Henry J. Kaiser, and B. Perini & Sons, d/b/a Kings River Constructors, Respondent named herein.

[Seal] /s/ LOUIS S. PENFIELD,

Acting Regional Director, National Labor Relations Board.

GENERAL COUNSEL'S EXHIBIT 1-G

[Title of Board and Cause.]

ANSWER TO COMPLAINT

Comes now Kings River Constructors by and through its sponsor and managing partner, Morrison-Knudsen Company, Inc., and for answer to the complaint in the above entitled case and pursuant to the notice of hearing submits the following answer to the charges made:

I.

Respondent admits the allegations of Section I of said complaint.

II.

Answering Section II of said complaint, Respondent states that it is a joint venture (a partner-

General Counsel's Exhibit 1-G—(Continued)

ship for the time being) composed of Morrison-Knudsen Company, Inc. (a Delaware corporation), Henry J. Kaiser Company (a Nevada corporation), Macco Corporation (a Nevada corporation) and B. Perini & Sons, Inc. (a Massachusetts corporation) and Respondent admits that it is doing business of sufficient volume to meet the jurisdictional "yard-sticks" of the National Labor Relations Board.

III.

Respondent admits the allegations of Section III of the complaint.

IV.

Section IV of said complaint relating solely to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, Respondent makes no answer thereto.

V.

Respondent denies each and every allegation of each and every paragraph included in Section V of said complaint and the whole thereof.

VI.

Respondent denies each and every allegation contained in Section VI of the complaint and the whole thereof.

VII.

Respondent denies each and every allegation set forth in Section VII of the complaint and the whole thereof. General Counsel's Exhibit 1-G—(Continued)

Wherefore, having fully answered the charges and allegations as set forth in the complaint herein, Respondent Kings River Constructors respectfully prays that said complaint be dismissed.

KINGS RIVER CONSTRUCTORS,
By MORRISON-KNUDSEN COMPANY, INC.,

/s/ CARROLL F. ZAPP, Vice President.

THOMAS L. SMITH and PAUL B. PUSEY,

/s/ THOMAS L. SMITH,
Attorneys for Respondent, Kings
River Constructors.

Duly Verified.

Certificate of Mailing Attached.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

On the duly issued complaint of the General Counsel of the National Labor Relations Board, alleging in substance that the Respondent herein, in violation of Section 8 (a) (1) and (3) of the Act, declined to employ one M. E. Tuttle, the charging party herein, because he was unable to obtain clearance from International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America,

Local No. 431 (hereinafter Teamsters, Local 431, or the Union), a hearing was held before the undersigned Trial Examiner at Fresno, California, February 24, 25, 1958. In its duly filed answer the Respondent denied the commission of the alleged unfair labor practices. All parties were represented at the hearing, participated therein, and were afforded full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence on the issues. The Respondent availed itself of the privilege accorded all parties to file a brief.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Respondent

Morrison-Knudsen, Inc. (a Delaware corporation), Henry J. Kaiser (a Nevada corporation), Macco Corporation (a Nevada corporation), and B. Perini & Sons (a Massachusetts corporation), are, and were at all times material herein jointly engaged in a venture under the name and title of Kings River Constructors, for the construction of a power house pursuant to a contract with the Pacific Gas and Electric Company of California on the Kings River in the State of California. Total cost of said construction will be in excess of \$1,500,000. During the calendar year ending December 31, 1956, the Respondent made total purchases of products and supplies received directly from outside the State, in excess of \$500,000. Each of the aforenamed corporations engaged in the joint venture known as Kings River Constructors, received during the calendar year ending December 31, 1956, total gross receipts from construction projects outside California in excess of \$50,000; each is part of a multi-State enterprise; and the total receipts from projects outside California by each such multi-State enterprise during the aforesaid calendar year were in excess of \$250,000.

On these stipulated facts jurisdiction is admitted and found.

II. The labor organization involved

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, is a labor organization within the meaning of Section 2 (5) of the Act.

III. The unfair labor practices

M. E. Tuttle worked for several years as a warehouse clerk in Oregon and California on construction projects in which Morrison-Knudsen was engaged in a joint venture with other companies or as a sponsoring partner. On or about November, 1956, he quit his employment on a project near Sonoma, California, in order to have some dental work done at Stockton, California, where he established residence. On his last job he had had his membership in Teamsters transferred to Local 439, Stockton.

After Christmas, 1956, he began seeking employment and on or about February 22, 1957, visited a friend, Jack Sharp, at the latter's home in Friant, close to Fresno, California. Sharp, with whom he

had worked on construction projects, was at that time employed as a warehouse clerk by Kings River Constructors (of whom Morrison-Knudsen was the sponsoring partner) on what was known as the Black Rock project, some 60 miles from Fresno. Sharp informed Tuttle that he was about to be transferred to the Wishon Dam project, on which he had worked previous to being assigned to Black Rock, and suggested that Tuttle might replace him at Black Rock.

On the following day, Sharp accompanied Tuttle to Fresno where they saw Bertram Lucian Perkins, project manager at Wishon, who had arranged for Sharp's transfer. Sharp recommended Tuttle to replace him at Black Rock and Perkins, who had known Tuttle on prior construction jobs, advised the latter to get his union card cleared by Teamsters Local 431 in Fresno. According to Tuttle's credited testimony, Perkins warned him that he might have some trouble with Al Fudge, secretary of Local 431, inasmuch as the latter might not want to accept the transfer of Tuttle's card from the Stockton local.¹

Tuttle testified that Perkins told him to present

¹ Sharp testified that Perkins asked Tuttle how he was "set up" with the Teamsters, and when Tuttle replied that he was still a member, advised him to get his card in with the Fresno local and to "make himself right with the union in Fresno." Perkins denied that he told Tuttle he would have to clear with the Teamsters, but admitted that he "probably told him to see the union * * * That would be the normal procedure."

himself at Black Rock on the following Monday. Sharp testified that when he recommended Tuttle to replace him at Black Rock, Perkins "seemed to think that was all right." Perkins denied that he instructed Tuttle to report on the job and testified that he had no authority with respect to hiring personnel at Black Rock. Contrary to Tuttle's testimony, the project manager at Black Rock was not Perkins but Jack DeLay. Tuttle assumed that Perkins had authority at Black Rock because he had arranged for Sharp's transfer, but Perkins' actual authority in recruiting personnel was limited to the Wishon Dam job.²

Following his interview with Perkins, at the latter's suggestion, Tuttle went to the Fresno office of Kings River Constructors and put his application on file with James Thomas Wolcott, the labor coordinator for both the Black Rock and Wishon projects. Tuttle testified that Perkins accompanied him to Wolcott's office, and Wolcott being occupied at the time, had Wolcott's secretary register Tuttle's application for the warehouse job at Black Rock.³

² It is clear from Sharp's testimony that there was a considerable exchange of employees between the Black Rock and Wishon Dam projects, some twenty miles apart, and while technically each project had its own manager in charge of personnel there doubtless was very close cooperation between the two, and Wolcott regarded both Perkins and DeLay as his superiors.

³ Perkins did not recall having accompanied Tuttle to Wolcott's office but admitted that he may have done so, and Tuttle was firm in his testimony on the point.

The fact that Tuttle placed his application on file at Wolcott's office after talking with Perkins is a circumstance corroborative of Perkins' denial of an actual job offer. I think what actually happened was that when Sharp recommended Tuttle to Perkins, the latter assumed that Tuttle would fill the vacancy, or, in Sharp's words, "seemed to think that was all right," and this, together with his recommendation that Tuttle clear with the local union, gave rise to Tuttle's assumption that Perkins was actually assigning him to the job.

On the following day, a Sunday, Tuttle, thinking that he had been promised the Black Rock job, moved the trailer in which he was living to Friant, and on Monday went to the Fresno office of Local 431 where he saw Fudge, the local's secretary. He handed Fudge his union card and told him that Perkins had instructed him to report for work at Black Rock that day. Fudge did not want to accept the transfer of Tuttle's card from the Stockton local, told Tuttle that he already had more warehousemen that he could do anything with, and refused to clear him for the Black Rock job. Despite his failure to get union clearance, Tuttle then went to the Black Rock project and arrived there sometime in the afternoon of February 25.

On the Black Rock job, Sharp introduced him to John E. Atkins, warehouse manager at Black Rock. Atkins informed Tuttle that there must be some mistake because Wolcott had someone else coming on the job. He advised Tuttle to see Wolcott.

Atkins testified that prior to February 25 he had

been advised by Sharp of the latter's transfer to Wishon, and that Sharp had recommended Tuttle to replace him at Black Rock. Atkins admitted that he thereupon requested Tuttle by name as a replacement for Sharp and testified that he made the request through Weatherman, office manager and Atkins' immediate superior - his usual procedure in obtaining warehouse personnel. Atkins also told Sharp to have Tuttle "contact" him. He did not know Tuttle personally but knew of him because of work on prior projects. According to Atkins, there was some delay in Tuttle's reporting for the Black Rock job and in the interim the vacancy had been filled by the hiring of one Myers. This testimony, as will be seen, is not consistent with that given by Wolcott.

After his interview with Atkins, Tuttle saw Wolcott. According to him he saw Wolcott at the project immediately after talking with Atkins. According to Wolcott, he first met Tuttle when the latter came to his Fresno office on Tuesday, February 26. He testified that he had been informed by his secretary that Tuttle had been in the office the previous day, and Tuttle admitted that it might have been Monday, February 25, when he filed his application at Wolcott's office. Be that as it may, when they met Tuttle informed Wolcott that Perkins had assigned him to the Black Rock job and Wolcott replied that Perkins had no authority over personnel at Black Rock. According to Tuttle, Wolcott informed him that he had already called a man for the warehouse job at Black Rock. This would accord with what he

had been told by Atkins. According to Wolcott, he informed Tuttle that there was no vacancy at Black Rock and that he would be contacted if later there was a job opening. During this interview, Tuttle volunteered to Wolcott that he was having difficulty in getting cleared through Local 431.

According to Wolcott, it was after his interview with Tuttle that he was asked by DeLay, Black Rock project manager, to "get him a good warehouseman," whereupon he got in touch with Fudge and Fudge said that he had a good one, to which Wolcott replied, "Fine. Send him up." Myers was thereupon hired through the Union to fill the vacancy caused by Sharp's transfer. The records indicate that Myers was hired on February 28 and that he went to work as a warehouse clerk at Black Rock during the first week in March. Obviously, therefore, Atkins' testimony that Myers had already been hired when Tuttle first approached him about the job, was erroneous, and why, on February 25, he should have advised both Sharp and Tuttle that the job was filled, invites speculation. Respondent's witnesses provided no explanation.

Tuttle, apparently having learned of the identity of the person hired to fill the vacancy shortly to be caused by Sharp's transfer, went to Fudge's home one evening to protest his clearance of a man whom Tuttle "understood had never belonged to the Union," while denying clearance to Tuttle. Fudge became angry at Tuttle's invasion of his privacy, and told Tuttle that he should leave his, Fudge's,

blankety blank business alone and not to come to his house again.

Despite his failure to obtain union clearance, Tuttle continued his efforts to obtain work at Black Rock. He repeatedly saw Wolcott but received no encouragement for future employment.

On about March 6 or 7 he again saw Atkins at the project. Atkins testified that on this, as on the former occasion when he saw Tuttle, he advised the latter that the vacancy caused by Sharp's transfer had been filled and that there was no job opening. According to Tuttle, on this occasion Atkins also told him that he had asked for Tuttle by name to fill the Sharp vacancy and had been advised that Tuttle was not eligible for the job because the Union refused to clear him. Tuttle further testified that Atkins told him he had called Fudge with respect to clearing Tuttle and Fudge had replied that Tuttle was not available for any job at Black Rock. Atkins, according to Tuttle, advised him to "get right" with the Union. Atkins denied that he called Fudge with respect to employing Tuttle or that he advised Tuttle to clear with the Union. He admitted that Tuttle told him of his difficulties with Fudge. Leon Maples, a warehouse clerk at Black Rock, testified that he overheard Tuttle tell Atkins of his belief that Fudge was responsible for his failure to get the Black Rock job, and heard Atkins reply that he had put in a "requisition" for Tuttle by name before Myers was hired, and that Wolcott said that Tuttle was not available. I am satisfied that whether or not he told Tuttle that he had personally called Fudge and that Fudge had refused to clear Tuttle for the job, he conveyed the information to Tuttle that Tuttle had failed to get the Black Rock job because of Fudge's refusal to clear him and advised Tuttle to "get right" with the Union. Tuttle's testimony on these points was convincing. Atkins was not a reliable witness, but on the contrary was evasive, and, I am reasonably certain, withheld facts within his knowledge on Tuttle's rejection as a replacement for Sharp.

After some two weeks' employment at Black Rock, Myers, hired to fill the Sharp vacancy, quit or was discharged, and a new employee, Ryan, was hired to take his place. Atkins had worked with Ryan previously and although he testified, in effect, that his role in the hiring of warehouse employees was restricted to recommendations channeled through his superior, Weatherman, he admitted, with respect to Ryan, that he personally called the Los Angeles office where Ryan was then employed to learn whether Ryan would be available to work at Black Rock. On being advised of Ryan's availability, he informed Weatherman that he would like to have Ryan as a warehouse clerk "because he had worked for me off and on for the last ten years." Ryan was immediately hired.

Both Ryan and Myers were cleared through Local 431.

Early in April, Wolcott, on being informed that Maples was resigning, called Tuttle by telephone and told him of the vacancy and informed Tuttle that he had him "in mind" to fill it, and that he

would be contacted later with respect to it. Wolcott testified that he refused Tuttle's application for the vacancy caused by Sharp's transfer because of Tuttle's age—70 years—and because of his attitude and background, but later made the tentative offer upon being advised that Atkins wanted him. He denied that at the time he hired Myers he had been advised that Atkins wanted Tuttle for the job. Wolcott admitted that before making Tuttle a tentative offer, he discussed the matter with Fudge and that Fudge told him, in effect, that the decision was up to him. The vacancy caused by Maples' resignation was not filled, however, because of the discontinuance of the night shifts and Tuttle was never actually employed by Kings River Constructors.

Summarization and Conclusions

Tuttle applied for a job as warehouse clerk at Black Rock on being advised by his friend Sharp that the latter was being transferred to Wishon. Sharp recommended Tuttle as a replacement to Atkins, warehouse manager at Black Rock and Atkins, who was acquainted with Tuttle's work, asked for Tuttle by name as a replacement for Sharp. Absent an explanation of why he was not informed in the matter, contrary to Wolcott's testimony, I am convinced that Wolcott had knowledge of Atkins' recommendation. Atkins' status as a supervisor with authority effectively to recommend in matters of hiring and discharging, was stipulated. He testified that his recommendations on hiring were effective only about half the time but the only

specific mention of being overruled was with respect to the hiring over his objections of the son of his immediate supervisor, Weatherman. Admittedly, Maples was hired on his recommendation, and in the hiring of Ryan he took the initiative, himself ascertaining that Ryan was available and thereafter obtaining his employment through Weatherman. In the case of Tuttle, however, his recommendation was ignored or, at least, not followed, and Myers was hired instead, not on the strength of anybody's recommendation but through clearance with Fudge. Contrary to Atkins' testimony, and on Wolcott's testimony, Myers had not been hired at the time Tuttle presented himself at the Black Rock project, nor later when Tuttle applied to Wolcott. Why was Myers requisitioned for the job through the Union, when Tuttle had Atkins' recommendation and was available? I think there can be but one answer. Tuttle could not get union clearance and had aroused Fudge's antagonism. Wolcott's explanation that he was not impressed with Tuttle because of the latter's age and manner of putting himself forward rings false in view of Wolcott's testimony that he later—after he had talked to Fudge and gained at least Fudge's acquiescencecalled Tuttle and told him he had him in mind for hiring at Black Rock. True, according to the testimony, Atkins had again asked for Tuttle, but he had requested Tuttle in the first instance and his request had been ignored. Tuttle was no younger in April than he was in February and I doubt if his disposition had undergone any major change in the interim. He had worked previously on Morrison-Knudsen construction jobs and his work must be deemed to have been satisfactory inasmuch as Atkins, who knew of his work, requested him and no evidence was presented to show that he was not competent or that the Respondent had any reason to believe that he was not competent.

Fudge did not testify and Wolcott denied that he talked to Fudge with respect to Tuttle before hiring Myers. Wolcott, however, knew that Tuttle was in trouble with the Union because Tuttle told him about his difficulty with Fudge. When Maples attempted to ascertain from Fudge why Tuttle was not cleared for employment at Black Rock, Fudge replied sarcastically that he could not have such a young man telling him, Fudge, how to run his business. And while Wolcott denied that clearance with the Union was required for employment with the Respondent, clearly this was the practice. Perkins advised Tuttle to clear with Fudge because this was the "usual procedure," and Perkins was in a position to know. Atkins in a sworn pre-trial statement expressed his view that applicants for employment were required to clear with the Union. While he sought to modify this statement by testifying that this was merely his "impression," and that it had no basis other than conversations with various nonmanagerial employees, I think he was in a position to know and did know from experience that this was a customary requirement. Both men hired as warehouse clerks after Tuttle applied for the job, had union clearance and, as previously stated, one

of them, Myers, was directly requisitioned through the Union.

One of Wolcott's functions as labor coordinator was to establish and maintain friendly relations with the local unions. Preliminary to starting the Black Rock project, he met with local union representatives to discuss with them manpower requirements on the project and contemplated conditions of employment. There was of course nothing reprehensible about this. Construction projects such as this could not function efficiently, and probably not at all, without the cooperation of the unions, inasmuch as it normally would be necessary to recruit some and perhaps most of the manpower requirements through the local unions, and work stoppages could be ruinous. This is the historical situation in the construction industry where closed shop conditions have long prevailed. Law that runs contrary to custom is not readily accepted. But however understandable the Respondent's desire to obtain and maintain the cooperation of the local unions, and however much its present action fits into the historical pattern, its denial of a job to Tuttle because the latter incurred Fudge's displeasure and was therefore unable to obtain union clearance, was discriminatory and violative of Section 8 (a) (1) and (3) of the Act. It is so found.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section III above, occurring in connection with the

operations of the Respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

It having been found that the Respondent refused M. E. Tuttle employment because he was unable to obtain union clearance, thereby discriminating against him, it will be recommended that Respondent offer him employment in a position substantially equivalent to that in which he would have been employed except for his failure to obtain union clearance, with such seniority and other rights and privileges as would have accrued had he not been discriminatorily denied employment, and make him whole for any loss of pay suffered because of the discrimination against him, by payment to him of a sum of money equal to what he normally would have been paid in Respondent's employ from the date when he was first discriminatorily denied employment, to the date of Respondent's offer of employment, less his net earnings during said period and any money he may already have been paid because of Respondent's discrimination against him.4 Loss of pay shall be

⁴ There was evidence to the effect that a settlement on a charge filed by Tuttle against Local 431, involving the payment of a sum of money to Tuttle by Local 431, had been effectuated prior to the hearing in this proceeding.

computed upon a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the

following:

Conclusions of Law

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, is a labor organization within the

meaning of Section 2 (5) of the Act.

- 2. By refusing employment to M. E. Tuttle because of his failure to obtain clearance from the aforenamed labor organization, thereby encouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
- 3. By the said discriminatory refusal of employment to M. E. Tuttle, the Respondent interfered with, restrained and coerced its employees, and potential employees, in the exercise of rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
- 4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation, and B. Perini & Sons, d/b/a Kings River Constructors, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) By refusal of employment or in any like or related manner, encouraging membership in Teamsters Local 431, or any other labor organization;
- (b) In any other manner interfering with, restraining, or coercing employees, or applicants for employment, in the exercise of rights guaranteed in Section 7 of the Act.
- 2. Take the following affirmative action designed to effectuate the policies of the Act:
- (a) Offer M. E. Tuttle immediate employment in a position equivalent to that in which he would have been employed on or about February 28, 1957, except for his failure to obtain union clearance, with such seniority and other rights and privileges as would have accrued to his benefit had he been employed on or about that date, and make M. E. Tuttle whole in the manner, according to the method, and under the conditions set forth in Section V above, entitled "The remedy";
- (b) Post in conspicuous places, including places where notices to employees are customarily posted, at its office in Fresno, California, and on the site of its Black Rock project, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Di-

rector for the Twentieth Region of the Board, shall, after being signed by an authorized representative of the Respondent, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the said Regional Director in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply with the foregoing recommendations.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

Dated this 12th day of May 1958.

/s/ WILLIAM E. SPENCER, Trial Examiner.

APPENDIX

Notice to All Employees: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees and applicants for employment that:

We Will Not require clearance through International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, or any other labor organization, as a condition of employment or in any like or related manner discriminate in regard to hire and tenure of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees, or applicants for employment, in the exercise of the right to self-organization, to form or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will offer M. E. Tuttle employment previously denied him because of his failure to obtain clearance through the above-named labor organization, and make him whole for any loss of pay he

suffered as a result of the discrimination against him.

Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation, and B. Perini & Sons, d/b/a Kings River Constructors,

(Employer)

By......(Representive) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

EXCEPTIONS OF RESPONDENT, KINGS
RIVER CONSTRUCTORS TO INTERMEDIATE REPORT AND RECOMMENDED
ORDER OF THE TRIAL EXAMINER

Come now the Respondent, Kings River Constructors, and herewith and hereby files its exceptions to the Intermediate Report and Recommended Order of the Trial Examiner entered in the above entitled case on the 12th day of May, 1958, as follows:

Findings of Fact

Exception No. 1

Respondent excepts to the statement and findings of the Trial Examiner appearing on page 2, lines 48-60, which provides:

"According to Tuttle's credited testimony, Perkins warned him that he might have some trouble with Al Fudge, secretary of Local 431, inasmuch as the latter might not want to accept the transfer of Tuttle's Card from the Stockton local.

for the reasons, among others, that:

- (1) Such finding and statement is contrary to the weight of evidence and to fact.
- (2) That the Trial Examiner has quoted Mr. Perkins' statement out of context which should read, "I probably told him to see the union. And I probably told him to see Jim Wolcott. That would be the normal procedure." (Tr. 132, 15-17)

The inference (and apparent finding) drawn by the Trial Examiner from the sentence "That would be the normal procedure" would apply with equal, if not greater force, to the statement omitted by the Trial Examiner, "And I probably told him to see Jim Wolcott."

Exception No. 2

Respondent excepts to all references to the testimony of the Charging Party, Mr. M. E. Tuttle, appearing in the Intermediate Report and Recom-

^{&#}x27;Sharp testified that Perkins asked Tuttle how he was "set up" with the Teamsters, and when Tuttle replied that he was still a member, advised him him to get his card in with the Fresno local and to "make himself right with the union in Fresno." Perkins denied that he told Tuttle he would have to clear with the Teamsters, but admitted that he "probably told him to see the union * * * That would be the normal procedure."

mended Order on page 3, lines 1-37, page 4, lines 7-22; page 4, lines 37-47, 52-59; page 5, line 11; and to any use or reference thereto upon the grounds among others that:

(1) The Charging Party and witness, Tuttle, was shown to be a member of the Teamsters Union, and hence his testimony was inadmissible to show and did not purport to show any claimed preference or discrimination on his behalf by the Union of which he was member, or by the Respondent because of his membership or because of any connections the Respondent might have had with the Union.

(2) The matter of discrimination caused or encouraged by a Union on behalf of or against its own member is not within the purview or protec-

tion of the National Labor Relations Act.

Exception No. 3

Respondent excepts to the statement and finding of the Trial Examiner appearing on page 4, lines

1-5, which provides:

"According to Atkins, there was some delay in Tuttle's reporting for the Black Rock job and in the interim the vacancy had been filled by the hiring of one Myers. This testimony, as will be seen, is not consistent with that given by Wolcott."

for the reasons, among others, that:

(1) The conclusion drawn by the Trial Examiner that "This testimony as will be seen is not consistent with that given by Wolcott" is contrary to all other evidence.

(2) It affirmatively appears from the testimony

of Tuttle himself that the vacancy for which Myers was hired had been filled at the time Tuttle first appeared at the project, Monday, February 25, 1957, and Tuttle was advised that the vacancy had been filled on that date. It further appears that Tuttle was aware of the identity of the individual (although perhaps not the name) who filled the vacancy and went immediately from the project site to Mr. Fudge's home in Fresno (Tr. 65, 3-25; Tr. 66, 1-26; Tr. 67, 1-3)

Exception No. 4

Respondent excepts to the finding and conclusion of the Trial Examiner appearing on page 4, lines 31-35, which provides:

"Obviously, therefore, Atkins' testimony that Myers had already been hired when Tuttle first approached him about the job, was erroneous, and why, on February 25, he should have advised both Sharp and Tuttle that the job was filled, invites speculation. Respondent's witnesses provided no explanation."

on the grounds and for the reasons that:

- (1) Respondent is under no duty to provide an explanation for what the Charging Party and his witnesses testify.
- (2) It is not competent for the Trial Examiner to conclude that his inference is exclusive of any other reasonable inference which may be drawn. On the contrary, the record is quite clear that a commitment had been made for the hire of a replacement and the fact that the replacement did not

sign an employment card until February 28, 1957, or commence work until the first week of March is not material or pertinent.

Exception No. 5

Respondent excepts to the finding and conclusion of the Trial Examiner appearing on page 4, lines 45-47, which provides:

"Despite his failure to obtain union clearance, Tuttle continued his efforts to obtain work at Black Rock. He repeatedly saw Wolcott but received no encouragement for future employment."

for the reason that:

(1) It is directly contrary to undisputed evidence that at no time did the Respondent request union clearance for Mr. Tuttle and there was, therefore, no reason for union clearance.

(2) The Trial Examiner found (page 5, lines 30-

33):

"Early in April, Wolcott, on being informed that Maples was resigning, called Tuttle by telephone and told him of the vacancy and informed Tuttle that he had him 'in mind' to fill it, and that he would be contacted later with respect to it."

(3) Such finding and conclusions are contrary to

and unsupported by the evidence.

Exception No. 6

Respondent excepts to the statement appearing on page 6 of the Intermediate Report, lines 2-4, which provides:

"In the case of Tuttle, however, his recommen-

dation was ignored or, at least, not followed, and Myers was hired instead, not on the strength of anybody's recommendation but through clearance with Fudge."

upon the grounds, among others, that such finding and statement is contrary to the weight of evidence and fact.

Exception No. 7

Respondent excepts to the finding and conclusion of the Trial Examiner on page 6, lines 31-34, reading:

"And while Wolcott denied that clearance with the Union was required for employment with the Respondent, clearly this was the practice. Perkins advised Tuttle to clear with Fudge because this was the 'usual procedure,' and Perkins was in a position to know."

on the grounds, among others, that:

- (1) Such finding and statement is contrary to the weight of evidence and fact.
- (2) The Trial Examiner has found that Perkins was Project Manager on an entirely different project and was employed by an entirely different employer. (Page 2, lines 44-52; page 3, lines 1-10)

There is no proof or testimony which would support the finding or inference that the practice or "usual procedure" of Kings River Constructors was the practice or "usual procedure" which Mr. Perkins followed as Project Manager for Morrison-Walsh-Perini on that firm's Wishon Dam Project.

Exception No. 8

Respondent excepts to the statement and conclusion appearing on page 6 of the Intermediate Report and Recommended Order of the Trial Examiner at lines 59-60, and on page 7 at lines 1-2, reading:

"its denial of a job to Tuttle because the latter incurred Fudge's displeasure and was therefore unable to obtain union clearance, was discriminatory and violative of Section 8 (a) (1) and (3) of the Act. It is so found."

for the reason that said statement and conclusion is against the evidence, contrary to fact, and is not supported by a proper finding of fact.

Conclusions of Law

Exception No. 9

Respondent excepts to Conclusions of Law Nos. 2, 3, and 4 reading as follows, page 7, lines 41-54:

"2. By refusing employment to M. E. Tuttle because of his failure to obtain clearance from the aforenamed labor organization, thereby encouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act."

"3. By the said discriminatory refusal of employment to M. E. Tuttle, the Respondent interfered with, restrained and coerced its employees, and potential employees, in the exercise of rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor prac-

tices within the meaning of Section 8 (a) (1) of the Act."

"4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

for each and all of the following reasons:

- (1) Said Conclusions of Law are not supported by and are contrary to any proper Finding of Fact.
- (2) Said Conclusions of Law are based upon and supported only by erroneous Findings of Fact which are not in accordance with and unsupported by the evidence in record.
- (3) Said Conclusions of Law are erroneous in that:
- (a) There was and is no evidence that Mr. Tuttle was offered employment by Respondent which was subsequently refused because he was unable to obtain Union clearance.
- (b) There was and is no evidence that the Union gave preference in referral for employment to its own members; on the contrary, the Trial Examiner has found that a non-member was referred to fill the vacancy Tuttle sought. (Page 4, line 40.)
- (c) There was and is no evidence that any act or thing done or alleged to have been done by the Respondent encouraged or was intended to encourage membership in the Union.
- (4) Said Conclusions of Law fail to state a proper charge of any unfair labor practice under and within the purview of the National Labor Relations Act.

Recommendations

Exception No. 10

Respondent excepts to each and every recommendation as suggested in the Trial Examiner's Intermediate Report and Recommended Order and more specifically as referred to on page 7, lines 15-30, both inclusive and page 8, lines 3-50, both inclusive, reading as follows:

"It having been found that the Respondent refused M. E. Tuttle employment because he was unable to obtain union clearance, thereby discriminating against him, it will be recommended that Respondent offer him employment in a position substantially equivalent to that in which he would have been employed except for his failure to obtain union clearance, with such seniority and other rights and privileges as would have accrued had he not been discriminatorily denied employment, and make him whole for any loss of pay suffered because of the discrimination against him, by payment to him of a sum of money equal to what he normally would have been paid in Respondent's employ from the date when he was first discriminatorily denied employment, to the date of Respondent's offer of employment, less his net earnings during said period and any money he may already have been paid because Respondent's discrimination against him.4 Loss of pay shall be com-

[&]quot;4 There was evidence to the effect that a settlement on a charge filed by Tuttle against Local 431, involving the payment of a sum of money to Tuttle by Local 431, had been effectuated prior to the hearing in this proceeding."

puted upon a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289."

"Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation, and B. Perini & Sons, d/b/a Kings River Constructors, their officers, agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) By refusal of employment or in any like or related manner, encouraging membership in Teamsters Local 431, or any other labor organization;
- (b) In any manner interfering with, restraining, or coercing employees, or applicants for employment, in the exercise of rights guaranteed in Section 7 of the Act.
- 2. Take the following affirmative action designed to effectuate the policies of the Act:
- (a) Offer M. E. Tuttle immediate employment in a position equivalent to that in which he would have been employed on or about February 28, 1957, except for his failure to obtain union clearance, with such seniority and other rights and privileges as would have accrued to his benefit had he been employed on or about that date, and make M. E. Tuttle whole in the manner, according to the method, and under the conditions set forth in Section V above, entitled "The remedy";
 - (b) Post in conspicuous places, including places

where notices to employees are customarily posted, at its office in Fresno, California, and on the site of its Black Rock project, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region of the Board, shall, after being signed by an authorized representative of the Respondent, be posted by it immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the said Regional Director in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply with the fore-

going recommendations.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid."

for the following reasons and upon the following grounds, among others, that:

- (1) Respondent has committed no act as declared illegal by the terms and provisions of the National Labor Relations Act.
 - (2) No legal basis exists for the exercise of any

remedy by order of the National Labor Relations Board.

- (3) Said recommendations and suggested cease and desist order are entirely without merit and unwarranted in that Respondent has committed no act as condemned or made illegal by the terms and provisions of the National Labor Relations Act.
- (4) Said recommended cease and desist order is broader than that warranted by law in that the law proscribes "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization", whereas the proposed order would make any refusal of employment a violation.
- (5) The suggested cease and desist order has no basis in fact from the record showing or indicating that Respondent restrained or coerced its employees or applicants for employment in the rights guaranteed in Section 7 of the Act.
- (6) Said suggested cease and desist order is too broad in Section 2 (a) page 8, lines 18 to 27 inclusive for the reasons that:
- (a) There is no finding or showing that Mr. Tuttle would have been employed or would have been offered employment by Kings River Constructors on or about February 28, 1957.
- (b) There is no showing or evidence that a position for which Mr. Tuttle is qualified was at that time open or is at this time available.
- (c) No "seniority" system is provided for or conveniently possible in the construction industry.

(d) There is no showing or evidence that Mr. Tuttle has lost wages or income as the result of any act of Respondent.

Appendix

Exception No. 11

Respondent excepts to the proposed form of notice annexed to the Trial Examiner's Intermediate Report and Recommended Order, as follows:

"We Will Not require clearance through International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, or any other labor organization, as a condition of employment or in any like or related manner discriminate in regard to hire and tenure of employment."

"We Will Not in any other manner interfere with, restrain, or coerce our employees, or applicants for employment, in the exercise of the right to self-organization, to form or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act."

for the reasons and on the grounds:

(1) That there is no legal basis upon the record

of this case and a proper interpretation of the case for the issuance of cease and desist order.

(2) That such notice is broader than warranted by the evidence and there should in all events be stricken therefrom the words "any other labor organization" for the reason that there is absolutely no basis for such reference since no other labor organization was mentioned nor is there a finding of general discrimination or general practice of union clearance.

and:

"We Will offer M. E. Tuttle employment previously denied him because of his failure to obtain clearance through the above-named labor organization, and make him whole for any loss of pay he suffered as a result of the discrimination against him."

for the reason that no opening for employment is available nor is there a finding or any evidence to support a finding that Mr. Tuttle has suffered a loss of pay as the result of the type of discrimination made unlawful under the National Labor Relations Act.

General Exceptions

Exception No. 12

Respondent excepts to each and every finding, conclusion and recommendation of the Trial Examiner as contained in the Intermediate Report and Recommended Order, and to all of them, for the reason that said findings and conclusions are contrary to the evidence and to law in so far as they

find a violation of the National Labor Relations Act, or any section thereof.

Exception No. 13

Respondent excepts to the Intermediate Report and Recommended Order on the grounds and for the reasons that the Trial Examiner failed to find and conclude on the basis of the evidence before him:

(1) No agreement, practice, understanding, or arrangement exists, or did exist, between Respondent and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America Local No. 431, providing for a referral or clearance system or other hiring hall or union security arrangement.

(2) "Refusal to hire" is not discrimination per se within the proscriptions of the National Labor Re-

lations Act.

(3) Discrimination per se is not a violation of the National Labor Relations Act.

(4) The Respondent cannot be found in the anomalous position of "encouraging membership in any labor organization" by hiring a non-union man for the position the Charging Party, a union member, sought.

(5) Respondent has committed no act violative

of the National Labor Relations Act.

Dated and Respectfully Submitted This 28th Day of May, 1958.

/s/ THOMAS L. SMITH,
Attorney for Respondent.

Proof of Service Attached.

United States of America Before the National Labor Relations Board

Case No. 20-CA-1288

MORRISON-KNUDSEN, INC., HENRY J. KAISER, MACCO CORPORATION, and B. PERINI & SONS, d/b/a KINGS RIVER CONSTRUCTORS, and M. E. TUTTLE, an Individual.

DECISION AND ORDER

On May 12, 1958, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommended that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions and recommendations.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation, and B. Perini & Sons, d/b/a Kings River Constructors, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Encouraging membership in and activities on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, or any other labor organization, by refusing employment to applicants unless they obtain clearance by such labor organization, or by otherwise discriminating in regard to hire or tenure of employment or any term or condition of employment.

(b) In any other manner, interfering with or restraining or coercing employees, or applicants for employment, in the exercise of the right to self-organization, to form, join or assist labor organi-

¹Because the discriminatory refusal on the part of the Respondent to hire the Charging Party absent union clearance goes to the very heart of the Act and because we believe that the Respondent's repeating the commission of the violation involved herein in the future may be anticipated by reason of its conduct herein, we order that the Respondent cease and desist from in any manner infringing upon the rights of employees as guaranteed by the Act. N.L.R.B. v. Entwistle Mfg. Co., 120 F. 2d 532, 536 (C. A. 4).

zations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a)(3) of the Act.

- 2. Take the following affirmative action designed to effectuate the policies of the Act.
- (a) Offer to M. E. Tuttle immediate employment in a position substantially equivalent to that in which he would have been employed on or about February 28, 1957, except for his failure to obtain clearance through the above-named labor organization, with such seniority and other rights and privileges as would have accrued to his benefit had he been employed on or about that date, and make him whole for any loss of earnings suffered as a result of the discrimination against him in accordance with the terms and subjects to the conditions described in the section of the Intermediate Report entitled "The Remedy."
- (b) Post at its office in Fresno, California, and on the site of its Black Rock project, if work there is still in progress, copies of the notice attached hereto and marked "Appendix." Copies of said

² In the event that this Order is enforced by a Court of Appeals, the notice shall be amended by substituting for the words: "A Decision and Order" the words "A Decree of a United States Court of Appeals Enforcing an Order."

notice to be furnished by the Regional Director for the Twentieth Region shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material;

- (c) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment of M. E. Tuttle under the terms of this Order;
 - (d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order of the steps it has taken to comply herewith.

Dated, Washington, D. C., October 17, 1958.

PHILIP RAY RODGERS, Member, STEPHEN S. BEAN, Member, JOHN H. FANNING, Member,

[Seal] National Labor Relations Board.

APPENDIX

Notice to All Employees: Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees and applicants for employment that:

We Will Not encourage membership in and activities on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 431, or any other labor organization, by refusing employment to applicants unless they obtain clearance by such labor organization, or by otherwise discriminating in regard to hire or tenure of employment or any term or condition of employment.

We Will Not in any other manner interfere with or restrain or coerce employees, or applicants for employment, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a) (3) of the Act.

We Will offer to M. E. Tuttle immediate employ-

ment in a position substantially equivalent to that in which he would have been employed on or about February 28, 1957, except for his failure to obtain clearance through the above-named organization, with such seniority and other rights and privileges as would have accrued to his benefit had he been employed on or about that date, and make him whole for any loss of earnings suffered as a result of the discrimination against him.

Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation, and B. Perini & Sons, d/b/a Kings River Constructors

| (Employer) | |
|------------------|---------|
| Dated | |
| By | |
| (Representative) | (Title) |

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States Court of Appeals for the Ninth Circuit

No. 16301

MORRISON-KNUDSEN, INC., HENRY J. KAISER, MACCO CORPORATION, and B. PERINI & SONS, d/b/a KINGS RIVER CONSTRUCTORS, a Joint Venture,

Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD, Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board—Series 7, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, known as Case No. 20-CA-1288, before said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony taken before Trial Examiner William E. Spencer on February 24, 25, 1958, together with all exhibits introduced in evidence.

- (2) Copy of Trial Examiner Spencer's Intermediate Report and Recommended Order issued May 12, 1958.
- (3) Petitioners' exceptions to the Intermediate Report and Recommended Order received May 28, 1958.
- (4) Copy of decision and order issued by the National Labor Relations Board on October 17, 1958.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 4th day of February, 1959.

[Seal] /s/ FRANK M. KLEILER,

Executive Secretary, National
Labor Relations Board.

¹ Respondent before the Board.

[Endorsed]: No. 16301. United States Court of Appeals for the Ninth Circuit. Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation and B. Perini & Sons, d/b/a Kings River Constructors, Petitioners, vs. National Labor Relations Board, Respondent. And National Labor Relations Board, Petitioner, vs. Morrison-Knudsen, Inc., Henry J. Kaiser, Macco Corporation and B. Perini & Sons, d/b/a Kings River Constructors, Respondents. Transcript of Record. Petition to Review and Petition to Enforce Order of the National Labor Relations Board.

Filed: February 9, 1959.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit

No. 16301

MORRISON-KNUDSEN, INC., HENRY J. KAISER, and B. PERINI & SONS, d/b/a KINGS RIVER CONSTRUCTORS, a Joint Venture, Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD and M. E. TUTTLE, Respondents.

PETITION FOR REVIEW OF DECISION Comes Now the above named Petitioners and, in support of this, their petition to review the Decision and Order of the National Labor Relations Board, entered and dated October 17, 1958, in case No. 20-CA-1288, and pursuant to the provisions of 29 U.S.C. Section 160 (f), respectfully show unto the above entitled Court:

I.

Nature of Proceedings

This is a petition to review the Decision and Order of the National Labor Relations Board, entered October 17, 1958, in National Labor Relations Board Case No. 20-CA-1288 (121 NLRB 179) against the above named Petitioners, a copy of which Decision and Order is attached hereto and designated Exhibit A. The said Decision and Order found that Petitioners had engaged in and were engaging in an unfair labor practice in violation of Section 8 (a) (1) and 8 (a) (3) of the National Labor Relations Act, and ordered Petitioners to cease and desist from certain conduct described therein and take certain described affirmative action. The said Decision and Order is a final order of the Board in this proceeding.

II.

Venue

The events out of which this proceeding arose all occurred at or in the general vicinity of Fresno, California. The original complaint was issued from the office of the Twentieth Region of the National Labor Relations Board located at San Francisco,

California, and the hearing before the Trial Examiner for the Board was held in Fresno, California. That the location of the construction work in which the petitioners were engaged forming the basis of jurisdiction of the National Labor Relations Act was located approximately sixty miles northeast of Fresno, California.

III.

Grounds of Relief

The Petitioners seek the relief prayed for herein on the following grounds:

- 1. That the factual findings and conclusion of the Board Decision, including the adopted Intermediate Report of the Trial Examiner, are not supported by substantial evidence on the record considered as a whole.
- 2. That the Trial Examiner committed errors of law in the conduct of the hearing which were excepted to at the time.
- 3. That the conclusions of law contained in the Decision of the Board, including the adopted Intermediate Report and conclusion of the Trial Examiner, are not as a matter of law supportable by the record or by the facts even as found by the Board and the Trial Examiner.
- 4. That the alleged conduct, even if found to violate the National Labor Relations Act, is nevertheless insufficient to support the broad scope of the Board's remedial Order.
 - 5. That the Board's Order sets forth remedies

inappropriate to the conduct found to be in violation of the Act.

6. That the Board's Order does not state with reasonable specificity the acts which the petitioners are to do or are to refrain from doing.

IV.

Relief Prayed

The Petitioners seek relief herein as follows:

- 1. That the court enter a decree herein setting aside, reversing or denying enforcement to the Decision and Order of the Board in total.
- 2. That in the event the prayer of Section 1 of this paragraph is not granted, that the court modify the Decision and Order of the Board as follows:
- (a) By striking paragraph 1 (b) from said Order.
- (b) By striking paragraph 2 (a) from said Order.
- (c) By striking paragraph 2 (b) from said Order.
- (d) By striking paragraph 2 (c) from said Order.
- 3. That in the event Sections 1 and 2 (b) of this paragraph are denied, by modifying paragraph 2 (a) to strike the provision requiring the offering of reinstatement to M. E. Tuttle, and further limiting the back pay period to the period during which

the job for which Tuttle applied was available, to wit, to on or about April 12, 1957.

Dated this 24th day of December, 1958.

MORRISON-KNUDSEN, INC., HENRY J. KAISER, and B. PERINI & SONS, d/b/a KINGS RIVER CONSTRUCTORS, a Joint Venture,

/s/ By R. B. SNOW,
An Authorized Official.

ALLEN, DeGARMO & LEEDY,
/s/ By GERALD DeGARMO,
/s/ SETH W. MORRISON,
Attorneys for Petitioners.

Duly Verified.

[Endorsed]: Filed December 29, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RE-LATIONS BOARD TO PETITION FOR REVIEW OF ITS DECISION AND OR-DER AND CROSS-APPLICATION FOR ENFORCEMENT OF SAID DECISION AND ORDER

The National Labor Relations Board, by its Associate General Counsel, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Sec. 151 et seq., as amended by 72 Stat. 945), (hereinafter called the Act) files this Answer

to the petition for review of its decision and order issued against petitioner on October 17, 1958, and also files a Cross-Application for enforcement of said decision and order.

- 1. The Board admits the allegations contained in paragraphs numbered I and II of the petition for review.
- 2. With respect to all other allegations of the petition to review, the Board prays reference to the certified transcript of record for a full and exact statement of the proceedings before the Board, the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter before the Board.
- 3. The Board denies each and every allegation of error contained in the petition for review.
- 4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects proper under the Act, and pursuant to Section 10 (e) of the Act, respectfully cross-applies to this Court for enforcement of said order.
 - 5. Pursuant to Section 10 (e) and (f) of the Act, as amended, the Board has certified and filed with the Court a list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the Board in Case No. 20-CA-1288.

Wherefore, the Board prays that the Court enter

a decree denying the petition to review and enforcing the Board's order in full.

Dated at Washington, D. C., this 4th day of February, 1959.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel, National Labor Relations Board.

[Endorsed]: Filed February 9, 1959. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON PETITION FOR REVIEW

Come Now the above named petitioners, and submit the following statement of points on their Petition to Review the Decision and Order of the National Labor Relations Board in this cause, entered and dated October 17, 1958:

- 1. That the factual findings and conclusion of the Board Decision, including the adopted Intermediate Report of the Trial Examiner, are not supported by substantial evidence on the record considered as a whole.
- 2. That the Trial Examiner committed errors of law in the conduct of the hearing which were excepted to at the time.
- 3. That the conclusions of law contained in the Decision of the Board, including the adopted Inter-

mediate Report and conclusion of the Trial Examiner, are not as a matter of law supportable by the record or by the facts even as found by the Board and the Trial Examiner.

- 4. That the alleged conduct, even if found to violate the National Labor Relations Act, is nevertheless insufficient to support the broad scope of the Board's remedial Order.
- 5. That the Board's Order sets forth remedies inappropriate to the conduct found to be in violation of the Act.
- 6. That the Board's Order does not state with reasonable specificity the acts which the petitioners are to do or are to refrain from doing.

Dated this 28th day of February, 1959.

ALLEN, DeGARMO & LEEDY,
By SETH W. MORRISON, •
Attorneys for the Petitioners.

[Endorsed]: Filed March 5, 1959. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

COUNTER-STATEMENT OF POINTS ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT

The National Labor Relations Board, by its Associate General Counsel, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Sec. 151 et seq., as amended by 72 Stat. 945), (hereinafter called the Act) submits the following counter-statement of points on the petition for review and cross-application for enforcement of its decision and order in this cause, issued against petitioners on October 17, 1958:

- 1. The factual findings and conclusions of the Board, including the adopted Intermediate Report of the Trial Examiner, are supported by substantial evidence on the record considered as a whole.
 - 2. The Board's order is proper in all respects.

Dated at Washington, D. C., this 11th day of March, 1959.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel, National Labor Relations Board.

[Endorsed]: Filed March 16, 1959. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board Twentieth Region

Case No. 20-CA-1288

In the Matter of:

MORRISON-KNUDSEN, INC., HENRY J. KAI-SER and B. PERINI & SONS, doing business as KINGS RIVER CONSTRUCTORS, Respondent,

and

M. E. TUTTLE (an individual),

Charging Party.

TRANSCRIPT OF PROCEEDINGS

Council Chambers, City Hall, Fresno, California, Monday, February 24, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before: William E. Spencer, Trial Examiner.

Appearances: Robert M. Yeates, Attorney, of the Staff of the National Labor Relations Board, 20th Region, 856 U. S. Appraisers Building, 630 Sansome Street, San Francisco 11, California, appearing as counsel for the General Counsel; Thomas L. Smith and Lee E. Knack, Attorneys, 319 Broadway, Post Office Box 450, Boise, Idaho, appearing on behalf of Kings River Constructors, Respondent; M. E. Tuttle, the Charging Party, 957 Santa Ana Drive, Santa Rosa, California, appearing on behalf of himself. [2]*

^{*} Page numbers appearing at top of page of Reporter's Transcript of Record.

Proceedings

Trial Examiner Spencer: This is a hearing before the National Labor Relations Board in the matter of Morrison-Knudsen, Inc., Henry J. Kaiser and B. Perini & Sons, doing business as Kings River Constructors, and M. E. Tuttle, an individual, Case No. 20-CA-1288. The Trial Examiner appearing for the National Labor Relations Board is William E. Spencer.

Will counsel state their appearances in the following order, please:

For the General Counsel.

Mr. Yeates: Robert M. Yeates.

Trial Examiner: For the Charging Party.

Mr. Tuttle: M. E. Tuttle.

Trial Examiner: What is your address, Mr. Tuttle?

Mr. Tuttle: 957 Santa Ana Drive, Santa Rosa, California.

Trial Examiner: And for the Respondent?

Mr. Smith: Thomas L. Smith.

Trial Examiner: And Mr. Knack?

Mr. Knack: And Lee Knack.

Trial Examiner: Lee E. Knack, do you want it to appear that way, Mr. Knack?

Mr. Knack: Yes.

Trial Examiner: I take it, there are no further appearances?

(No response.) [4]

Trial Examiner: Our reporter makes the only official transcript of these proceedings and all citations must be to the official transcript. Exhibits

should be filed in duplicate. If you want to discuss issues informally, request a recess, please. If you care to file a brief with the Trial Examiner and will so indicate before we close the hearing, he will set a time within which briefs will be received. And if you wish to engage in oral argument, that will be made a part of the transcript at the close of the evidence. I believe that is about all in the way of formalities.

Will you proceed with the introduction of the

papers, Mr. Yeates?

Mr. Yeates: Yes. At this time I would like to offer in evidence the formal documents, which I have tentatively marked for identification here as follows:

General Counsel's Exhibit 1-A is the original

charge filed May 8th, 1957;

1-B is the affidavit of service, with the date of mailing May 9, 1957, to which is attached the Post Office receipt;

1-C is the first amended charge, filed June 7th,

1957;

1-D is the affidavit of service of the first amended charge, date of mailing June 7th, 1957, to which is attached the Post Office return receipt;

1-E is the complaint and notice of hearing, dated

the 27th of December, 1957; [5]

1-F is the affidavit of service, with the date of mailing December 27th, 1957, to which is attached Post Office return receipts;

1-G is the answer to the complaint, filed January

6th, 1958.

(Thereupon, the documents above referred to were marked General Counsel's Exhibits Nos. 1-A to 1-G, respectively, for identification.)

Mr. Yeates: I will hand a copy of these documents to Respondent, and at this time I move that they be received in evidence.

Trial Examiner: Objection, Mr. Smith?

Mr. Smith: No objection.

Trial Examiner: Receive—

Mr. Smith: Mr. Yeates, may I ask, the answer appears to be a copy of the answer.

Mr. Yeates: You have a copy. The formal documents are here. I just gave you a copy for examination.

Mr. Smith: Oh.

Trial Examiner: Did you want to see the originals?

Mr. Smith: No; I suppose the copies actually conform to the originals of the formal documents. There will be no objection.

Trial Examiner: Received.

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-G, respectively, for identification were received in evidence.) [6]

Mr. Yeates: At this time I would like to— Trial Examiner (interrupting): We have no jurisdictional problem here, Mr. Yeates, do me?

Mr. Yeates: I don't think we do. I would like to make a motion in that regard and I think that will take care of it.

At this time I would like to move to amend

Paragraph II of the complaint to identify the names of the corporations engaged in the joint venture known as Kings River Constructors to conform with the answer made, so that the Paragraph II would read: "Morrison-Knudsen Company, Inc., a Delaware corporation, Henry J. Kaiser Company, a Nevada corporation, Macco Corporation, a Nevada corporation, and B. Perini & Sons, Inc., a Massachusetts corporation, are and were at all times material herein"—and then the remainder of that first paragraph would read as it was in the complaint;

Then, the last subparagraph under Paragraph II would be corrected to read: "Morrison-Knudsen Company, Inc., Henry J. Kaiser Company, Macco Corporation and B. Perini & Sons, Inc., the four companies engaged in"—and from there on it would be the same.

Trial Examiner: Is that satisfactory to you, Mr. Smith?

Mr. Smith: That is satisfactory.

Trial Examiner: Granted.

Mr. Yeates: And with that amendment, I would also move now, pursuant to Section 102.20 of the Board's Rules and Regulations, [7] that the following paragraph of the complaint be deemed to be admitted as true and so found by the Trial Examiner and the Board, for the reason that the Respondent's answer has failed to deny the application of that.

The paragraphs I refer to are Paragraph I,

Paragraph II as amended, and Paragraph III of the complaint.

Now, on the Paragraph II, I deem from Respondent's answer that in that they are admitting the volumes set out would be correct.

Mr. Smith: We are not denying it. We are within the jurisdictional yardsticks, we presume.

Mr. Yeates: Very well.

Trial Examiner: That seems to cover that, Mr. Yeates.

Mr. Yeates: Very well.

Trial Examiner: Let's see. Where is Paragraph IV of the complaint?

Mr. Yeates: Paragraph IV—on that also, Mr. Trial Examiner, at a pre-hearing discussion it was my understanding that the Respondent will stipulate that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, is a labor organization within the meaning of Section 2 (b) of the Act.

Trial Examiner: So stipulated?

Mr. Smith: So stipulated. One of these days we are going to ask for proof just to see how it is done. [8]

Mr. Yeates: Well, if that is the only thing we have to worry about—

Trial Examiner: I have conducted hearings where it had to be proved.

Mr. Yeates: Yes.

Trial Examiner: Proceed, Mr. Yeates.

Mr. Yeates: At this time I would like to call Mr. Tuttle.

MANFRED E. TUTTLE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Yeates): Will you state your full name, Mr. Tuttle?

A. Manfred E. Tuttle. I reside at 957 Santa

Ana Drive, Santa Rosa, California.

Q. What is your field of work, Mr. Tuttle?

A. Well, in the last few years I have been working in the warehouse as a warehouse clerk.

Q. For what companies have you worked?

A. Well, I worked for Morrison-Knudsen up at Lomolo and I worked for a combination of Morrison-Knudsen Company at Beardsley Dam.

Q. And approximately when was that?

A. I quit in November of—I think it was either the 12th or the 14th—of 1956.

Q. Are you a member of any union, Mr. Tuttle?

A. I am a member of the Teamsters and Warehousemen.

Q. What local? A. 439.

Q. Where is that located?

A. Fresno.—Or Stockton. Pardon me.

Q. All right, Mr. Tuttle. Did you at any time in February of '57 contact Mr. Sharp at his home?

A. Yes, I did.

Q. Do you know the approximate date?

A. I think it was Friday night I first contacted him, if I am not mistaken, Friday night. That

(Testimony of Manfred E. Tuttle.) would be about somewheres around the 18th or 19th, somewheres around there.

Q. Was it a Friday, do you know?

A. No; maybe a little later than that.

Q. Friday night, you say?

A. Friday night, when I first contacted Mr. Sharp.

Q. And that was at his home? A. Yes.

Q. Did you have any discussion with Mr. Sharp at that time regarding employment?

Trial Examiner: Do we have Mr. Sharp identified?

Mr. Yeates: Thank you. I will identify him.

Q. (By Mr. Yeates): The person we are referring to as Mr. Sharp, would you give his name and address?

A. His name is Jack Sharp, and he lives at Friant, about [10] 20 miles out from here.

Trial Examiner: California?

The Witness: Yes.

Q. (By Mr. Yeates): Do you know where Mr. Sharp was employed at that time?

A. Yes. He was employed at the—I believe they call it the Haas Tunnel there, at the Black Rock.

Q. Those names are interchangeable, Haas Tunnel and Black Rock?

A. Yes. Some of them call it the Haas Tunnel—spelled H-a-a-s.

Trial Examiner: I don't think we know who Mr. Sharp is yet, just his name and address.

The Witness: He's sitting right here behind me.

Q. (By Mr. Yeates): You say he was employed at Black Rock project; and in what capacity was he employed there?

A. As a warehouse clerk.

Trial Examiner: Clerk?

The Witness: Yes.

Trial Examiner: Thank you, Mr. Yeates.

Mr. Yeates: Certainly.

Q. (By Mr. Yeates): And what was your discussion with Mr. Sharp?

A. Mr. Sharp told me he was being transferred to Wishon and that there would be a vacancy where he was there at Black Rock Tunnel, [11] so he said to come down with him the next day; we were to come down Saturday and see Mr. Bert Perkins. He was the boss up there.

Q. Boss up where? Would that be at Wishon or at Black Rock?

A. Well, I understood he was over the whole business, but there seems to be some question about that. He was the——

Q. Where did you go to see Mr. Perkins?

A. We went first to the office on Merced Street here and he wasn't there. They told us that he was over having a conference or something in the hotel. We went over to the hotel and we found Mr.—

Q. Who is "we"?

A. Jack Sharp and I.

Q. And Mr. Perkins is employed by whom?

A. Well, he is employed by that company, that combination of whatever companies it is now; there's three or four of them.

- Q. Would it be Kings River Constructors?
- A. Yes, Kings River Constructors.
- Q. Do you know what his title was?
- A. Project manager.

Trial Examiner: You have a date on this, haven't you, Mr. Yeates?

Mr. Yeates: Yes.

Trial Examiner: All right.

- Q. (By Mr. Yeates): You went to see Mr. Perkins at the Fresno— [12]
 - A. Yes, we did.
 - Q. What date was that?
- A. I think it was the 23rd. I am not sure. But it was on a Saturday.
 - Q. It was a Saturday? A. Yes.
- Q. Was that the Saturday immediately following your discussion with Mr. Sharp on Friday evening?

 A. It was the next day.
- Q. And you state, to the best of your knowledge, that was February 23rd? A. Yes.
 - Q. Did you see Mr. Perkins there?
 - A. Yes, I did.
- Q. Who was present other than Mr. Sharp and yourself and Mr. Perkins?
- A. Well, there was one of the superintendents—I know him only as "Pinky", I can't remember his other name. I only know him as "Pinky"—he was there, and Mr. Del Billings, superintendent of the—
 - Q. Do you know who Mr.——
- A. Superintendent of the kitchens and all of their eating places in these camps, he was super-

(Testimony of Manfred E. Tuttle.) intendent over all of those. He was there. And Jack Sharp was there.

Q. What time of the morning was this? [13]

A. Well, it was before noon. It was after 9 and before noon. I can't tell you just the exact time of the day. Somewheres, I should imagine, around 10:00 o'clock.

Q. Did you have discussion between Mr. Perkins and yourself at that time? A. Yes.

Q. Was there any discussion between Mr. Sharp and Mr. Perkins?

A. Yes. That discussion took place first.

Q. Well, then, will you state to the Trial Examiner as best you recall what statements were made at that time and identify who made the statements?

A. Well, Mr. Sharp asked Mr. Perkins if he was going to send him up to work at Wishon on Monday and Mr. Perkins said yes. And he says, "Well, that will leave a vacancy then in my place there, won't it?" And Mr. Perkins said yes. "Well," he says, "you know Tuttle. He worked with you up on the Beardsley Dam. How about him?" And Mr. Perkins says, "Yes," said to Jack, "You tell John Atkins."

Q. And do you know who John Atkins is?

A. He was the warehouse manager at Black Rock or Haas Tunnel, or whatever you might call it. "And tell him to be up at the tunnel Monday." And he told me to go and clear with the union and get on the job for Monday.

- Q. This last statement, was that made directly to you or to Mr. Sharp, about clearing with the union? [14]
- A. It was made to me, because I was talking to him then.
- Q. What did Mr. Perkins say to you in that regard?
- A. To go and clear, to get my card cleared from the union and to be up on the job Monday.
 - Q. Did he identify the job?
 - A. Yes. Black Rock.
- Q. Was there any further discussion at that time between Mr. Perkins and yourself and Mr. Sharp?
- A. No. I believe that was the end of it, as far as I know; as far as I can remember, at least.
- Q. From that meeting, where did you go after that?
- A. Well, I had to go back and get my trailer first, you know, back to, I had my trailer at the house; and my wife was up at Stockton.
- Q. Mr. Tuttle, at the time after you had talked with Mr. Perkins did you have to do any further business in Fresno before leaving?
- A. Well, I went over to the office, to put my name in at the office over there.
- Q. You say "office." What do you mean by "office"?
 - A. The company's main office here.
 - Q. Kings River Constructors? A. Yes.
 - Q. Where is that located?

A. It's on Merced Street, across from the [15] Fresno Hotel; that is all I know.

Q. Did you talk with anybody over there?

- A. Yes. Mr. Perkins took me in to the office of Mr.—Mr. Wolcott's office. And Mr. Wolcott, I don't know whether he was there or whether he wasn't. But——
 - Q. You speak of Mr. Wolcott-
 - A. But his secretary was there.
 - Q. Do you know who Mr. Wolcott is, what his position with the company is, by title?
 - A. It's—I don't really know what the name is —labor relations man, anyway.
 - Q. All right. Mr. Perkins, you say, took you into Mr. Wolcott's office? A. Yes.
 - Q. What did you do at that time?
 - A. Well, he told the lady that was there to put my name on the list for the job up at Black Rock.
 - Q. Was your name put on the list?
 - A. I believe so, because the lady wrote it down, and I presume she did. She asked my name and my address and my telephone number.
 - Q. Then what did you do after—was there anything further done at the office at that time?
 - A. No. I had to go and get my—It was getting late and I had to go and get my trailer and I had to be back by Monday, so I had to hurry it. [16]
 - Q. All right.
 - A. So I went on back and then I went into the —got my trailer down the next morning, and I put it down and went into the union office.

- Q. Where is the union office you speak of?
- A. I don't know what the address of it is. I just can't—
 - Q. What city? A. Fresno.
 - Q. Fresno union office? A. Yes.
 - Q. What local is that?
 - A. 431, I believe.
 - Q. Was anybody with you at that time?
- A. Well, there was a man who rode down with me. But he didn't go in the office with me.
- Q. And state what you did when you went into the office of the union.
- A. Well, this fellow that took me down identified—Al Fudge, he was sitting in the window there and it appeared he was alone.
- Q. Did he identify what capacity he had with the union?
 - A. He was secretary of the union.
 - Q. Then what happened?
- A. Then I went into the office and handed Mr. Fudge my card [17] and told him that I had got a job up there. And he flew off—
 - Q. Up there—did you identify where?
- A. Up at Black Rock. And he flew off the handle and commenced to cuss and swear and said—
- Q. Well, now, without—state what he said. Do you recall what he said to you, Mr. Tuttle?
- A. "Well," he says, "we have got more goddamned warehousemen around here now than we can do anything with, and I wish that company would get their sons-of-bitches and their men all

(Testimony of Manfred E. Tuttle.) out of here and get the hell out of the country." That is what he said.

Q. Did he make any statement to you in reference to your clearance?

A. He said no, he said, "No, I won't clear you for that job."

Q. Was there any further discussion at that time?

A. Well, I couldn't see much use of making any more discussions with him. So I went down and I got in my—a friend of mine drove me up in his car to the warehouse at Black Rock.

Q. Now, Mr. Tuttle, before you left Mr. Fudge had you identified the job you were seeking with him? A. Yes.

Q. And in connection with that job what was your, or what were your, statements to Mr. Fudge?

A. I told him that I had a job, that they had offered me a job up there, that Mr. Perkins had told me to come and get on the job by Monday. [18]

Q. Very well. And then, you say, after he had declined to give you clearance you left?

A. That is right.

Q. Where did you go then?

A. Well, we went out to-

Q. When you say "we," who was that?

A. This Mr. Tracy, I believe is his name. I believe I gave you his name as "Kelly," but his name is Tracy. He's Irish, commonly known as "Irish" on the job, but his name is Tracy. And we drove up to the job.

Q. And what job was this?

A. At Black Rock, or Haas Tunnel. And I went in the office and I saw Mr. Sharp. And Leon happened to be there that morning.

Q. Who is Leon?

A. Well, he's the gentleman sitting right in the back——

Q. What is his last name? Do you know?

A. Leon—

Q. Would that be Leon Maples?

A. Leon Maples, that is it. I know the man well, but I can't remember his last name.

Q. What is his position with the company, if you know?

A. Mr.——?

Q. At that time. [19]

A. Leon Maples?

Q. Yes.

A. He was a warehouse clerk; I believe he was on the swing shift at that time.

Q. Was he in a capacity similar to that of Mr. Sharp? A. I beg pardon?

Q. Was he in a capacity similar to that of Mr. Sharp? A. Yes, sir.

Q. When you went into the office, state what you did after that.

A. Well, I went in the office and talked to Jack for awhile and——

Q. That is Jack Sharp?

A. Jack Sharp. And he introduced me to Mr. Maples, Leon, and I had never met him before, and he said that John Atkins was busy on the

phone, and he says, "As soon as he gets through talking on the phone I will go in and you can talk to him." As soon as he got through, why, Jack took me to the door and I went in and talked to Mr. Atkins alone.

- Q. Now, state what conversation was had with Mr. Atkins and identify who made the statements.
 - A. Well, Mr. Atkins——

Q. Mr. Tuttle, it probably would be better if you kept your hand away from your mouth.

A. I'm losin' my teeth. Mr. Atkins told me that there must [20] be some mistake. He said, "We talked about you here before this, but," he said, "Mr. Wolcott has got someone coming from Santa Ana"—or Santa Anita or some place—"for this job," he says. "Have you got your name in the office?" And I told him yes, my name had been in the office, was in the office already.

Q. Did he identify who the gentleman was who was coming to fill the vacancy?

A. No, he didn't identify the man who was coming in the vacancy. But I understand that the man—

Q. Well, never mind that, Mr. Tuttle. Then was there any further discussion with Mr. Atkins?

A. "Well," he says, "you had better go up and see Mr. Wolcott. He is up at the office." You know, their main office is some distance from the warehouse. And he said, "You had better go up there and see Mr. Wolcott." So I went up and I—we had to wait quite awhile, and finally somebody

identified his car for me and I just waited outside until he came out and I talked to him out in the, as he was getting into his car. And he said, "Well," he says, "I have already called a man for that job." And I asked, I told him that Mr. Perkins had told him to go up there. And he said, "Well, I have called a man for that job."

Q. All right. Then what happened?

A. When I asked him, he says, "Well, Mr. Perkins has no right [21] to put a man on this job anyway." He says, "He is just over at Wishon." So I said to him, "Well, it seems rather strange to me that a man can take a man off of a job but can't put another one in his place. He must have some authority here."

Q. Was there any further conversation?

A. No. He says, Mr. Wolcott said, "Well, that is the way it is. He is just over Wishon." And from then on, well, I just left.

Q. Where did you go then, Mr. Tuttle?

A. I came back to Wishon—to, from Wishon, or to Fresno, and then I drove over to Friant where my trailer was.

Q. After you had seen Mr. Wolcott did you have any further contact with Mr. Fudge?

A. Yes, I did.

Q. Where was this that you saw Mr. Fudge?

A. At his own home.

Q. And what date, if you recall?

A. No, I don't recall the exact date. But it was

—I think it was the next—I believe the next Friday night.

Q. The next Friday?

A. The Friday after—

Q. Following the date you went up to the Black Rock project? A. Yes, sir.

Q. And where is the home of Mr. Fudge; do

you know?

A. It's in Fresno; but I don't remember the street. [22]

Q. What time was it you went to see Mr. Fudge?

A. Oh, it was about 8:30, 8 or 8:30 in the evening.

Q. Did anybody accompany you?

A. No, not in the house.

Q. All right, did you see Mr. Fudge at that time?

A. Yes. I went in and he was raring to go. And he even told me he didn't want me to ever come back to his house again. And I assured him that I never would, and that I wouldn't come in even to carry him out if he was dead.

Q. What purpose did you have in going to see

Mr. Fudge?

A. I went to him, to see him, about the man he put on the job up there. I understood that he never had belonged to the union, that he took out a permit or joined here, that he didn't carry no former warehouseman's card, and that he had put him on in preference to me. And I just——

Q. Well, other than the conversation you have

(Testimony of Manfred E. Tuttle.) related to the Trial Examiner, was there any further discussion at that time?

A. Beg pardon?

Q. Was there any further discussion with Mr. Fudge at that time?

A. No, there was no further discussion. We were both rather angry and I left.

Trial Examiner: I don't really think we have just exactly what Mr. Fudge said.

Mr. Yeates: Very well. [23]

Q. (By Mr. Yeates): For the Trial Examiner, if you can recall the words that were used by Mr. Fudge—first, Mr. Tuttle, it probably would be better if you identified what you said to begin with and then what Mr. Fudge replied.

A. Well, first I told him that I was up on the job—which always makes a business agent mad—

Trial Examiner: Just tell us what was said now. Don't put in what you thought about it, Mr. Tuttle, but just what was said, will you?

- A. (Continuing): I said to him I was up on the job and I understood they put a man there who was a bartender before he come here. And he said, "You leave my goddamned business alone and I will take care of it. And if you have got any damned thing to say to me at all, you say it down to the office. Don't you come to my home again. And I assured him that sure never would do it.
- Q. Now, was there any further discussion or conversation?
 - A. That is the only conversation I ever had

(Testimony of Manfred E. Tuttle.) with Mr. Fudge and it's the last I ever want to have with him.

Q. Well, on your answers, Mr. Tuttle, it would be better if you would just respond to what has

been asked. A. Yes, sir.

Q. Following, then, your conversation with Mr. Fudge, was there any further contact with you concerning work at the Black Rock project? [24]

A. Yes.

Q. Will you tell in what form that was?

A. Well, they told me that there was a man going to quit. I knew that, who was going to leave then.

Q. Do you know who told you that, Mr. Tuttle?

A. No, I don't. To tell you the truth, it was someone working on the job anyway, that this party had told him that they were going to leave and that there would be a vacancy there. So some—I had my mail after I had left Mr. Beck, now, I had my mail forwarded to me in care of this Black Rock, this construction company, and my mail had gone up to Black Rock, you see, and a letter come to me, wrote in ink on it was: "Get in touch with John Atkins."

Q. Where was this written?

A. It was written on the outside of the envelope in red ink. And I don't know who wrote it.

Q. You don't know the identity of the party

writing that message?

A. No, I don't. It was a letter, the letter was from a friend of ours that we knew, but the letter

—this was just wrote on the outside of my letter as it was returned to me here at Fresno, you see.

Q. Do you have that envelope on which that was written now, Mr. Tuttle?

A. No, I haven't. I never thought it was important and I didn't keep it. [25]

Q. Very well. Then what did the message say, as best you can recall?

A. To call up John Atkins at the Haas Tunnel job. And I tried to call him on the phone and I couldn't, so I drove up.

Q. Did anybody accompany you?

A. Yes. My wife accompanied me this time.

Q. And you drove up to the Haas Tunnel?

A. Yes.

Q. Black Rock project? A. Yes, sir.

Q. All right, what did you do upon arriving at the Black Rock project?

A. I went to the warehouse and talked to Mr. Atkins.

Q. What date was this, as best you recall?

A. Well, it was the first part of March. I think it was about the 6th or 7th. I wouldn't know exactly, but it was right around there.

Q. Do you know what day it was, what day of the week it was?

A. I am sorry, I don't remember the date—or the day.

Q. When was it in reference to this time that you got this message on the letter?

A. Same day. I drove up the same day.

Q. The same day? A. Same day. [26]

Q. Do you know what time it was that you got your mail?

A. I got my mail about 9 o'clock. I had a box

at Friant at that time.

Q. And then, you state, you went into the warehouse and talked to Mr. Atkins? A. Yes, sir.

Q. Was anybody else present during this conversation? A. Leon Maples was there.

Q. Leon Maples? A. Yes.

Q. Yourself, Mr. Atkins, and was there anybody else present?

A. There were other men coming and going, you know, like they are, but I don't think any of them heard any of the conversation.

Q. All right. Identifying who made the statements, will you state what your conversation was with Mr. Atkins?

A. I asked Mr. Atkins if he had called me and he said he had. He said, "I called you by name and Al Fudge said that you wasn't available for any job up on this, on any of these jobs up here."

Q. Did you make any reply to that?

A. Well, there wasn't much I could say. I couldn't force the man to hire me.

Q. Did he make any other, any further, statements, other than the fact that he called for you by name and Mr. Fudge said [27] you weren't available?

A. He said he had called for me by name and

Mr. Fudge had told him that I was not available for any job up there.

- Q. Was there any further discussion with Mr. Atkins? A. No.
 - Q. With Mr. Atkins, no further discussion?
 - A. We talked, yes.
- Q. But anything about, in relation to, your work there?
- A. Not in relation to this case, no, not in relation to that.
- Q. During this conversation, do you know where Mr. Maples was?
- A. Well, Mr. Maples was right there in the work office.
- Q. Where would that be in relation to where you and Mr. Atkins were talking?
- A. Not very far away. Practically against us. Sometimes he was right up against us.
- Q. Was he there during this, during all of this conversation?

 A. Yes, I believe he was.
- Q. Following your conversation with Mr. Atkins did you speak with anybody else up at the project?
- A. At the moment, right at the moment, I don't recall at that time.
- Q. And where did you go following your conversation with Mr. Atkins?
- A. I came back down to Friant, where we had our trailer.
- Q. Following that appearance, did you make any further contacts [28] with the Kings River Constructors?

A. Oh, yes. I was in the office several times. And Mr. Perkins told me that he would have something for me pretty quick. But they never did. And I kept going back there off and on, sometimes three or four times when Mr. Wolcott was there, and several times when he wasn't there I went in his office and talked to the—

Q. Which office? Is this the one in Fresno?

A. This is the one in Fresno. I went into his office, the one on Merced Street down here.

Q. Did you have any further conversations, if any, with Mr. Wolcott? A. Yes.

Q. When was that; do you recall?

A. Well, it was sometime later. Someone else had, some other warehouse clerk had, quit. I don't know who it was. I believe—

Q. Well, what you believe is not—

A. No, I don't know. Anyway, Mr. Wolcott called me over the two-way radio.

Q. Where were you at this time?

A. I was living out on Shaw Avenue. I had moved my trailer down to this trailer court on Shaw Avenue. And he called me there. I had left my telephone number there. And he called me there and said to keep in touch with him, that there would probably be an opening there, there would be an opening if, [29] when this new superintendent come in, they would keep the three shifts, like they had, on.

Q. What date was this?

Λ. That would be about the 15th, or something

like that, of April, around the middle of April anyway, the 15th or maybe a little later, I don't know.

- Q. Was this before or after you had filed a charge with the National Labor Relations Board?
 - A. This was before.
- Q. And what was his statement to you at that time?
- A. Well, he told me—when I called him I couldn't get in touch with them, they have to call me from my trailer into the main office there to talk, and when I'd got there they had lost contact with him; but I called him the next day at the office down here and he told me if they kept on the swing shift and the graveyard shift there would be a job for me there. And I called up again a day or two after that, I didn't go to the office, I called him on the phone at his office, and he said that the new project manager, the new superintendent there, had decided to do away with both the swing and the graveyard shift.
- Q. And this conversation was sometime around April 15th or shortly afterwards?
 - A. Yes, that is right.
- Q. All right, was there any further discussion [30] with Mr. Wolcott or anybody else for the Kings River Constructors? A. No.
 - Q. Concerning your employment?
- A. No. I never went—after that I never even went to the office again because I knew there was no use.

Mr. Yeates: I have no further questions.

Trial Examiner: Mr. Smith?

Mr. Smith: May we have a short recess?

Trial Examiner: Certainly. Ten minutes?

Mr. Smith: That would be fine.

Trial Examiner: We will have a ten-minute recess.

(Short recess.)

Trial Examiner: All right, Mr. Tuttle, back to the witness stand. You may cross examine, Mr. Smith.

Cross Examination

- Q. (By Mr. Smith): Mr. Tuttle, when Mr. Yeates asked you your name and your work history and so on, I don't believe you stated your age. Would you mind stating your age for the record?
 - A. I was born in 1887.
 - Q. That would make you how old?
 - A. That would make me 70.
 - Q. What was your birthdate?
 - A. August 25th.
 - Q. August 25th, 1887?
 - A. 1887. I was born in Nebraska, if you want to know that. [31]
 - Q. You stated that you had worked during the last several years as a warehouseman?
 - A. Since 1953.
 - Q. Since 1953? A. Yes, sir.
 - Q. And what had you done previously?
 - A. Well, I am a mason by trade.
 - Q. You are a mason?

- A. Yes. But I have worked at everything. I have run a business of my own, I have run a hotel, hardware store. I have done a little of everything for myself.
- Q. What do you call home? Where have you done most of this, your life's work?
 - A. Seattle.
 - Q. Seattle? A. Yes.
 - Q. Seattle is your original home?
 - A. Yes.
- Q. When did you first go to work as a ware-houseman?
- A. I went to work for Morrison-Knudsen on the Lomolo Dam, at Lomolo, Oregon.
- Q. Were you at that time a member of any union?
- A. Yes. I joined the union right there at Medford.
 - Q. At Medford? A. Yes. [32]
 - Q. What union?
 - A. The Teamsters, warehousemen's branch.
 - Q. Do you recall the local number of that union?
- A. No, I don't. To tell you the truth, I can't give you the number. But I have got it all on my receipts at home. I transferred to 439 when I came here, so they would have it here.
 - Q. When did you transfer to 439?
 - A. When I went on the Beardsley job.
 - Q. Beardsley? A. Yes.
 - Q. And where is that?

A. That's about, I should say, 35 or 40 miles from Sonora.

Q. Sonora, California?

A. Yes, by a little town called Strawberry, if you know where that is.

Q. Now, that was the local union that had jur-

isdiction of that area, around Sonora?

A. Yes.

Q. The Fresno local, so to speak?

- A. Well, they had an office at Jimtown out there, you know, they had a local office at Jimtown; but all of our dues and everything went in to 439.
 - Q. 439, you say? A. Yes, in Stockton.

Q. Yes? [33]

- A. It all went in to Stockton, yes.
- Q. The number is 439?

A. Yes, in Stockton.

- Q. Well, where were you living at the time that you applied for work at the Lomolo project?
 - A. Where was I living at the time?
 - Q. Yes. A. Down at Sonora.

Q. At Sonora?

A. Yes. I had just been a short time. I came to Sonora along about a month before I went to work upon that job up there.

Q. I am talking about the Lomolo project in

Oregon.

Λ. Oh, where was I living then?

Q. Yes. A. Portland.

Q. Portland? A. Yes.

- Q. And you had lived there for sometime, is that correct?
- A. Well, I had really lived over in Redmond, of course; I had a business over in Redmond at that time.
- Q. And who did you see about finding the job at Lomolo?
- A. I went to work out there just at anything I could get.
- Mr. Yeates: Mr. Trial Examiner, I believe I shall have to object to this. I think it is immaterial. [34]

Trial Examiner: Well, it is going back pretty far, isn't it, counsel?

Mr. Smith: I submit, it is going back pretty far, but the counsel for General Counsel inquired as to his previous work history on direct.

Trial Examiner: That is so. It is just a question of how much time you want to spend. Do you have some particular objective in mind?

Mr. Smith: We have some particular objective, yes.

Trial Examiner: All right, he may answer.

- Q. (By Mr. Smith): You say you were looking for work generally at that time? A. Yes.
- Q. Did someone with whom you were acquainted advise you of a job at Lomolo?
- A. I am personally acquainted with some people by the name of Peebles and he happened to be a business agent for the Laborers at Medford, Ore-

(Testimony of Manfred E. Tuttle.) gon, and he told me there was a-I was well acquainted with the family before they came to-

Q. Well-

A. In fact, this family were old friends of mine.

Trial Examiner: He was a business agent for what?

The Witness: He was business agent for the Laborers, Laborers Union at Medford. And he told me about this job up there. He said to go up and take anything I could get, that [35] "You can probably get something better later, but go up and get a job as a laborer." So I went up and got a job as a laborer.

Q. (By Mr. Smith): Where did you first go in finding this job at Lomolo? Did you report at

the office in Klamath Falls or Medford?

A. The union gave me a card and I went right out to the office at Lomolo. They had an office, they were just setting an office up at Lomolo.

Q. At Lomolo?

A. Yes. They was just transferring at Clearwater.

Q. And you went to work as a warehouseman?

A. Not the first couple of weeks. I worked as a laborer.

For the Laborers? With the Laborers? Q.

A. Yes.

Q. As a common laborer?

A. As a common laborer; just any old thing. And then they sent me on a truck to pick up ware-

house stuff, you see, up at—we were moving from Clearwater down to Lomolo and I helped transfer all of that stuff down. And when I got down there, why, Bartlett asked me to stay in that warehouse with him.

- Q. I see. You worked for Mr. Bartlett there?
- A. Yes.
- Q. He was warehouse manager?
- A. Yes. [36]
- Q. And when you were working in the warehouse at Lomolo, was that the first time that you met Mr. Sharp?
 - A. Yes. That was the first time.
 - Q. You had never known Mr. Sharp before?
 - A. Never saw him in my life.
 - Q. And how long had you worked at Lomolo?
 - A. Eighteen months.
- Q. Eighteen months. During that period of 18 months how many warehousemen were in the warehouse, approximately?
- A. I don't know. They were—there were several that came and went.
- Q. Was Mr. Sharp with you there most all of these 18 months?
- A. No, he wasn't. He was only there a very short time.
 - Q. Only a very short time there? A. Yes.
 - Q. Had you ever known Mr. Atkins?
- A. No. I believe I talked to him once over the telephone, you know, that radio two-way radio business—when he was in the warehouse at Kla-

math Falls, I believe I talked to him once. And then I dropped in to his office, I think it was in '54, and talked to him just a few minutes. I don't know whether he even remembers it or not. But I do. I talked to him there. I wasn't at all acquainted with Mr. Atkins.

Q. When was the next time, to your memory, that you saw Mr. Atkins? [37]

A. When I met him up here at Black Rock.

Q. You recognized him from your previous——?

A. I couldn't help but recognize him, Atkinssix feet and something tall and a big neck.

Q. Yes. What was the reason for your termination, if you recall?

A. From Beardsley?

From Lomolo?

A. That is the winter they didn't clear the roads and they stopped everything. They just kept a few of the old bosses around there.

Q. General layoff for winter?

A. Yes, layoff for the winter.

A. Well— Q. Then where did you go?

Mr. Yeates: Mr. Trial Examiner, I again am going to object to this. I think it is outside the purview of the scope of the cross and I think it is still irrelevant and immaterial.

Trial Examiner: I guess if he wants to trace his employment history, as long as it is associated directly with this company, it is permissible. You covered the employment history briefly, to be sure, but you did cover it.

All right, proceed.

The Witness: What was the question? [38]

Mr. Smith: I will withdraw the previous question. I don't remember it, myself.

- Q. (By Mr. Smith): You after 18 months' employment at Lomolo were terminated for the general layoff for the winter?

 A. That is right.
- Q. Then did you immediately find other employment or did you move out of the area?
 - A. No, I didn't.
 - Q. Or did you move out of the area?
- A. No, I didn't. I went back up to Redmond, Redmond, Oregon. That is a small town above Bend about 15 miles. And I stayed there during the winter.
- Q. Then when did you first hear about the employment at Beardsley being available?
- A. Well, I think the first I heard about it was in the Construction Journal.
 - Q. In the Construction Journal? A. Yes.
- Q. Did you contact anyone concerning employment there?
- A. Yes, I did. I went down and contacted Mr. Daugherty.
 - Q. Mr. Who? A. Daugherty.
 - Q. How do you spell that name?
- A. D-a-u-g-h-e-r-t-y I believe it is. I don't know. It isn't the Irish Doherty. [39]
 - Q. Who was Mr. Daugherty?
 - A. He was the master mechanic.
 - Q. At Beardsley?
 - A. Yes. He was in charge of the warehouse.

They had a master mechanic in charge of the warehouse at Beardsley, is that correct?

A. Well, he was in charge at that time. There

was nobody else in the warehouse.

Q. Were you acquainted with anybody who was working at the time in the warehouse at Beards-A. I was acquainted with Jack Sharp. lev?

Q. Jack Sharp was there?

But then he wasn't working there at that time, either, when I first-

Did you get a job right then at Beardsley? Q.

No. I got a job about two weeks later. Α.

I see. And at that time was Mr. Sharp Q. working at Beardsley?

Yes, at that time he was. Α.

He had gotten a job in the meantime? Q.

Beg pardon? Α.

He had gotten a job there in the meantime? Q.

I believe they sent for him. Mr. Daugherty Α. wired for him to come up there, I believe.

Q. And your warehouse manager— [40]

A. Was Sharp at that time.

A. Yes. Was Sharp at that time? Q.

After Mr. Daugherty had hired him? Q.

Yes. Α.

And was Mr. Sharp your warehouse manager at all times?

A. No. They sent Jack from that job, from Beardsley, down to Wishon and they put Bartlett, the fellow who was over me before at Lomolo as warehouseman.

- Q. But Mr. Sharp didn't work for Mr. Bartlett?
- A. He did for awhile, yes.
- Q. I see.
- A. And then he went to Wishon.
- Q. To Wishon? A. Yes.
- Q. How long did you work there at that time, at Beardsley?
- A. Well, I worked from the 1st of July, around the 1st of July, until the 12th or 14th of November. I can't remember the date that I quit up there, but the records would show it.
- Q. The 12th or the 14th of November of what year?

 A. 1956.
 - Q. 1956. And—— A. I quit.
 - Q. You quit at that time?
- A. Yes. I quit to get my teeth fixed. I had to have all [41] my teeth out. I was in bad shape and I had to get them fixed.
 - Q. Do you recall a man by the name of Ryan?
 - A. Oh, yes, I know Mr. Ryan.
 - Q. At Beardsley? A. Yes.
- Q. And also had Mr. Ryan worked with you previously?
- A. No, not that I know of. I don't believe Mr. Ryan had ever worked with me before.
 - Q. Not at Klamath Falls?
- A. Not to my knowledge. He had never been in the warehouse, at least, with me, and he wasn't in the warehouse at Beardsley; he was in the office.
 - Q. He was in the office there.

- A. I don't believe I had ever met Mr. Ryan until I came there.
- Q. You state that you were born in 1887, and that makes you 70 years of age at this time?
 - A. That is right.
- Q. Had you always given that birthdate on all employment records with——
 - A. I think so. I am sure it's on my last one.
 - Q. You are sure it's on your last one?
- A. I have not given my age a time or two, because some places they won't hire you.
- Q. In other words, you advanced it a few years so that you [42] were not over-age, not over 65?
- A. Not with Morrison-Knudsen, the last time I gave my correct age.
- Q. You gave your correct age the last time. What was your reason for quitting at Beardsley?
 - A. At Beardsley?
 - Q. Yes.
 - A. I quit to get my teeth fixed.
 - Q. To get your teeth fixed?
 - A. I had to have my teeth all out, two new plates.
 - Q. As a matter of fact, Mr. Tuttle, at the time that you quit Beardsley, didn't you then advise the payroll office and your supervisor that you were retiring? A. No.
 - Q. You never did?
 - A. No, I did not. That is absolutely not true.
 - Q. Have you ever drawn social security benefits? A. Now I am.

Q. You are now? A. I am now.

Mr. Yeates: I am going to object to this. I think it's outside the scope of the direct. I don't think it has any bearing on his testimony here. I think it is immaterial and irrelevant.

Trial Examiner: Well, what is your social security point, [43] Mr. Smith?

Mr. Smith: Well—

Trial Examiner: Does that bear on whether he had retired or not?

Mr. Smith: Yes, it bears on whether he had retired or not. That is the reason it is listed in the company records for Mr.—

The Witness: I don't know where they got that idea.

Trial Examiner: All right, I want to give you as much leeway as seems——

Mr. Smith: In short, we would argue that he had removed himself from the labor market on or about November 12th or 14th of 1956, when he terminated.

The Witness: That is not true.

Trial Examiner: Just a minute, Mr. Tuttle.

If that is part of your defense, I will take the answer.

Mr. Yeates: I would like to have a continuing objection.

Trial Examiner: So noted.

You may answer the question.

I don't think you got an answer. Did you want an answer to that last question?

Mr. Smith: I think not.

Q. (By Mr. Smith): Mr. Tuttle, you stated that you terminated at Beardsley in November of 1956 to have your teeth looked after? [44]

A. That is right.

- And when you did move from the Beardsley area, or Sonora, California—were you living in Sonora at that time?
 - No. I was living in Beardsley Camp. Α.
 - A. Yes. In Beardsley Camp? Q.
 - Q. Then did you move to—
 - A. I moved to Stockton.
 - A. The day I quit. Q. To Stockton?
 - A. Yes. Q. The day you quit?
 - Q. And you had your teeth fixed at that time?
 - That is right. A.
 - Then when did you next attempt to find em-Q. ployment?

A. Well, just as soon as I could get through at

the dentist. They had a quite a job with me.

Trial Examiner: Let's see. You quit about November the 12th or the 14th. Could you give us any idea when you next applied for employment?

The Witness: Yes. It would have been after Christmas, right after Christmas, when I started looking for jobs.

Q. (By Mr. Smith): Where did you start look-

ing for jobs?

A. I started, I registered down there at the Employment office at Stockton and I registered down at the union hall. [45]

- Q. Had you had correspondence or had you called Mr. Sharp in the meantime?
 - A. No, I never called Mr. Sharp.
 - Q. When did you come to Fresno?
- A. I came down just to visit him because he was a friend of mine. I had known him, you know, up in that——
- Q. When was that, that you first came down to visit him, after leaving Beardsley?
- A. It was at the time I applied here for a job. I got down here, and he told me he was being transferred and that there would be a job up there where he was. So I applied for this one.
- Q. And where were you living in this area at the time that you came to see Mr. Sharp? Did you stay at his home?
 - A. No. I was staying at Stockton at that time.
 - Q. At Stockton?
- A. Until after I had got a promise of a job, and then I moved down here.
- Q. You moved down here—you have testified that you went back and got your trailer and then came down.

 A. Yes.
- Q. I see. What was the date, approximately, when you came down to see Mr. Sharp, to visit him?
- A. As near as I can remember, it was about the 19th, somewhere, the 19th or 20th, something like that. [46]
 - Q. Of February?
 - A. Yes. It was on Friday night, anyway.
 - Q. Friday night? A. Yes.

Q. If I recall it, I think Friday night would be about the—it was February 22nd.

Mr. Knack: That is right.

Mr. Smith: The calendar will show.

- Q. (By Mr. Smith): And Mr. Sharp told you; you said you were looking for work, is that correct?
 - A. Yes.
 - Q. As a warehouseman preferably?
 - A. Yes, preferably.
 - Q. It didn't matter?
 - A. No, I didn't care.
 - Q. You nodded. At 70 years of age, may I ask, are you actively seeking work as a laborer?

A. I can lift more than you can. I will bet you

on it.

Q. Well, right here, I wouldn't doubt it.

A. I don't feel that a man's age has got anything to do with it.

Mr. Yeates: Let's just answer the questions, Mr. Tuttle.

Q. (By Mr. Smith): You arrived here Friday evening?

A. I arrived at Friant Friday evening, not here.

Q. That is where Mr. Sharp was living at the time? [47] A. That is correct.

Q. I see. And the next morning, I think you have testified—a Saturday morning, is that correct?

A. That is correct.

Q. You went then with Mr. Sharp to the office of Kings River Constructors, is that correct?

A. That is correct.

- Q. Mr. Sharp at that time was working for the Kings River Constructors, wasn't he?
 - A. That is right.
- Q. Had he, to your knowledge, been working for them for a considerable time or had he been working for another contractor in this area?
 - A. Working there ever since he left Lomolo.
- Q. He was working at where, to your knowledge?
- A. At Wishon—I think he worked at Wishon first and then he was transferred to—I believe that is it. Of course, I haven't—
- Q. Do you know who the contractor is at Wishon?
 - A. It's Morrison-Knudsen, a combination thereof.
 - Q. Do you know the name of that combination?
- A. I believe it's Perini & Walsh, Perini and Walsh is with him.
- Q. Morrison, Walsh & Perini—does that sound familiar?
- A. I don't know, because I never worked in the offices, I [48] don't know exactly how many.
- Q. You know where the local office is here at Kings River Construction, at Fresno?
- A. Yes. On Merced Street, across from the hotel.
 - Q. Do you recall the signs on the office windows?
- A. It says "Morrison, Walsh & Perini"—if you pronounce it that way. That is an Italian name, I believe, and I don't pronounce them very good.
 - Q. Was there any other name on the window?

A. Oh, I don't believe there is. "Morrison, Walsh & Perini," right on the window.

Q. Mr. Sharp wrote you that he was leaving his employment at Black Rock?

A. No; he told me he was being transferred.

Q. He told you he was being transferred?

A. Yes.

Q. At Black Rock? A. Yes.

Q. And that there would be a job available?

A. Yes.

Q. Did he tell you when this transfer was to take place?

A. That is what we went to see Mr. Perkins about.

Q. I see. On this Saturday morning?

A. Yes.

Q. You went to the office; and was Mr. Perkins at the office? [49]

A. No. Someone was in the office, and I don't recall who, and they told us they were having a sort of a conference, a few of them, over in the Fresno Hotel. We went over there and found them sitting at a little booth, drinking some coffee and talking amongst themselves.

Q. In the restaurant at the Fresno Hotel?

A. Yes; that coffee shop there.

Q. And would you tell us again who was present at that time?

A. Well, I don't know Pinky's name, but everybody knows Pinky. He is the superintendent over,

I believe over all of the cats and all that stuff, all of the dirt business, you know.

- Q. Yes?
- A. And then there was Mr. Del Billings, who is a supervisor or superintendent or something; anyway, he takes care of all of their mess halls and all that stuff.
 - Q. Yes? A. He was there.
 - Q. And Mr. Perkins was there?
- A. And Mr. Perkins was there. And some other gentleman; I don't know him.
 - Q. You don't know the other gentleman?
 - A. That is right.
 - Q. And Mr. Sharp and yourself arrived?
- A. We came in just as they were about ready to leave, see. [50]
 - Q. About ready to leave? A. Yes.
- Q. Did you sit down at the booth and talk with them?
- A. No, sir, we didn't. There wasn't room to sit in there at that little booth anyway; and besides they were getting up, just starting to get up when we got there.
- Q. And did Mr. Sharp introduce you to Mr. Perkins and the individuals at the table?
- A. Well, Mr. Sharp didn't have to introduce me to Perkins. I knew him. I worked with him a year and a half, a year and 18 months.
 - Q. Whereabouts? A. At Lomolo.
 - Q. At Lomolo?
 - A. Not Lomolo. Beardsley.

Q. Mr. Perkins was what? What was his office?

A. Mr. Perkins was, well, we used to call him the second in command up there. Anyway, he was under Tucker.

Q. Under Mr. Tucker?

A. Under Mr. Tucker.

Q. At Beardsley? A. Yes.

Q. What was the name of that contractor at Beardsley? A. Tri-Dam Constructors.

Q. Tri-Dam Constructors? [51]

A. That is right.

Q. Now, at the time that you met Mr. Perkins in the Fresno Hotel you were aware of the fact that he was project manager at Wishon Dam? Is that correct? A. I didn't get your question.

Q. Were you aware of the fact that Mr. Perkins was project manager at Wishon Dam?

A. I was aware that he was the project manager. I thought he was over the whole bunch up there. I didn't know any difference. I didn't know what was going up there.

Q. I see.

A. I knew that he left Beardsley for that purpose.

Q. After you had had your conversation with Mr. Perkins, which was more or less as you have said, discussed Mr. Sharp's going to work for Mr. Perkins, do you recall in that conversation any mention of Mr. Sharp's superior at Black Rock or the project manager at Black Rock?

- A. Yes. He told Jack to tell Mr. Atkins that I would be on the job Monday.
- Q. Well, what did he say concerning Mr. Sharp's employment, is what I—in other words, Mr. Sharp, as I understand it, talked to Mr. Perkins first about his own transfer?
 - A. That is right.
- Q. And did Mr. Perkins relate that he had talked to somebody at Black Rock concerning Mr. Sharp's transfer or——? [52]
- A. Yes. He indicated that he was just taking him out. He didn't say that he talked to anybody. He just said, "I want you up there."
- Q. He didn't mention in that conversation Mr. DeLay's name?
- A. No, sir, he didn't mention Mr. DeLay or no one.
- Q. Had you met Mr. DeLay or heard of Mr. DeLay at the time of this conversation?
- A. No. I didn't know the name, never heard it until you mentioned it.
- Q. Mr. Sharp never told you that Mr. DeLay was project manager at Black Rock? A. No.
- Q. Following the conversation in the cafe at the Fresno Hotel on the Saturday morning, where did you go then?
- A. I went to get my trailer. It was up at Stockton.
- Q. You understood that you had a job at that time, is that right?

A. Right. That is quite right. I understood I had a job. He told me to——

Q. You didn't go over to the office of Morrison, Walsh & Perini or Kings River Constructors?

A. I wouldn't be sure whether I went that same day, whether I went to the office or whether I waited until Monday morning when he came back. I couldn't say for sure because that is a long time ago. [53]

Q. Did you go to see Mr. Fudge on that same

day?

A. I went to see Mr. Fudge the same day that I—that the office was open, whatever day that was. I don't believe he was open on that Saturday. I believe I went there Monday. I don't believe the union office is open on Saturday.

Q. Before you went to get your trailer or afterwards? A. It was afterwards, I think.

Q. After you went to get your trailer? You are not sure? A. That is right.

Q. You hadn't talked to Mr. Fudge then before you decided to move down to Fresno, or Friant?

A. I don't know whether I talked to him before that or whether I didn't. Now, I can't, I wouldn't want to swear to that, because that's a long time ago and I wasn't keeping track of everything.

Q. Well, it is a memory test. But you did go to Stockton that same day to get your trailer, is that correct?

A. That is correct.

Q. And how long did it take you to get up to

(Testimony of Manfred E. Tuttle.) Stockton and get your trailer and come back to

Friant?

A. Well, I went up to Stockton and I got my trailer and I left there at 3 o'clock and I pulled in just about dark to Friant.

Q. On what day?

A. That would be Saturday night-or Sunday night. Sunday [54] night.

Q. Sunday night? A. Yes.

- Q. You went from Fresno to Stockton Saturday and got your trailer Sunday morning and drove back, is that it?
 - A. That is right. I got the trailer——
 - Q. You got in here late Sunday night?
 - A. Not too late. It was about sundown.
- Q. Where did you tie your trailer up at that time? A. I tied my trailer up at Friant.

Q. Where was Jack Sharp living?

- Right in his back yard, you might say, front yard or whatever.
 - Q. Was he living in a trailer at the time, too?

A. No. He has a home there.

Q. He has a home there? A. Yes.

Q. And he permitted you to tie up in his back yard, or front yard?

A. Yes; he wanted me to stop there for a day or two.

Q. When did you next contact the office at Kings River Constructors?

A. I went right to the office Monday morning, and I don't know whether that's the morning that

Mr. Perkins took me in to Mr. Wolcott's office and told me to give my name to the clerk— [55] to give my name to the lady that was in there.

Q. Did Mr. Perkins meet you at the door?

A. He met me outside. He saw me standing out in the hall and come out of his office and took me in there.

Q. Come out of Mr. Wolcott's office?

A. Yes, that is right.

Q. What did Mr. Perkins say at that time?

A. He said, "Register him for the job up there." That is what he told her.

Q. He told the girl in the office at that time?

A. That is right.

Q. Did you see Mr. Wolcott?

A. Not that morning.

Q. Not that morning?

A. I didn't see him until I got out to the job. He was out on the job.

Q. Then, did you see Al Fudge that day?

A. Yes. That's the day I seen him, that day, and asked him about it.

Q. When did you see Al Fudge?

A. Before I went out.

Q. To the job?

A. Yes. There's one thing I forgot to explain to you. When I talked to Mr. Perkins the first time he told me, "You will [56] have a hell of a lot of trouble with Fudge, but he will come around all right. We will get him around all right. He won't want to take your card in."

- Q. You were a member of Mr. Fudge's local union, weren't you?
- A. No. I was a member at Stockton. I am a member at Stockton. I belong to the Stockton local.
 - Q. The Stockton local? A. Yes.
- Q. That is a different local union than the Fresno local?
- A. It's supposed to be international, but it ain't. I belong to the local at Stockton. I transferred in there from Medford, Oregon.
- Q. Did you make any effort then to transfer your card?
- A. Yes. They won't take it. They refused to take my card.
- Q. Mr. Fudge refused then, at the time, to transfer—
- A. Yes, that is right. They have refused every-place else I have moved to take it. They refused it now at Santa Rosa, they refused it at San Rafael. I tried to put it in there. They refused to take my card in any place. The only thing they will take is my money for dues.
- Q. Would you relate again your conversation with Mr. Fudge?
- A. You mean when I first went in the office that day?
 - Q. When you first went in, yes.
- A. Well, not exact words, of course. I can give you the main thing. He told me, "We have got more goddamned warehousemen [57] around here now than we can handle and I wish this goddamned com-

(Testimony of Manfred E. Tuttle.)
pany would take this men and their whole goddamned outfit and get the hell out of here." That is
what he told me. And I——

- Q. Did you tell him you had a job?
- A. That is right.
- Q. You told him that?
- A. He said, "I will never put you on that job."
- Q. Those were his words?
- A. Those were his words. He said, "I might clear you for the Big Pool," I believe he said—I believe it is—you probably know of that job out here, that Big Pool job, what they call the Big Pool. That is all I know about it. I have heard about it. He said, "I might clear you for that." And after I was out there to his house that night he said, "I wouldn't clear you for any goddamned job."
 - Q. That was after you had been up to the job, when you went out to his house?
 - A. Yes. "I will never put you to work," he says.
 - Q. After talking with Mr. Fudge, then you went up, you caught a ride with somebody or took your car—? A. Dan Tracy wanted to go up.
 - Q. Dan Tracy?
 - A. Yes. And he wanted to go up there anyway, and he knew a lot of people up there, and he said, "You get in and ride [58] with me." So I bought the gas and he took his car and we went up.
 - Q. And you went in to see Mr. Atkins?
 - A. Mr. Atkins? Yes, I went in to see Mr. Atkins. Not Mr. Perkins.
 - Q. Did you go directly to the warehouse to see

Mr. Atkins or did you go to the office of the company up there?

- A. I went to Atkins at the warehouse first, right to the warehouse.
- Q. And did you find Mr. Sharp up there at that time?
- A. Yes. I found Mr. Sharp; and Mr. Leon Maples was there, too.
 - Q. You hadn't met Mr. Maples before?
 - A. No, I hadn't met him.
 - Q. Mr. Sharp introduced you to Mr. Maples?
 - A. That is right.
- Q. And then Mr. Sharp took you in to see Mr. Atkins, is that right?
- A., Not exactly took me in. Mr. Atkins was talking on the phone. And he says, "I will go in and talk to him, and when he gets through"—and then John called me into the office.
 - Q. He called you into his office? A. Yes.
 - Q. And you talked with him there?
 - A. Yes.
 - Q. Just the two of you? [59] A. Yes.
 - Q. And at that time—?
- A. He says, "Somebody must be screwy, Mac"—they all call me "Mac," you know—he said, "Something must be screwy, Mac. Walcott told me that he had a man up here for this job, coming up."
 - Q. Mr. Atkins told you that?
- A. He told me that after I came in the office. He says, "There must be something screwy."
 - Q. I didn't think he knew you previously. How

did he come to call you "Mac"? I didn't think he knew you previously.

A. Everybody knew me up there as "Mac," and I suppose he had gotten familiar with it through hearing the rest of the people talk about me.

Q. Had Jack Sharp talked with Mr. Atkins

about you before?

- A. That I wouldn't know. But I know—yes, he said, "We have talked about you." Mr. Atkins said that to me.
 - Q. About you? A. Yes.
 - Q. Sometime the week previously?
 - A. Yes.
- Q. As a matter of fact, didn't Mr. Atkins contact you in Stockton and urge you to come down?
 - A. Mr. Atkins?
- Q. Excuse me. Mr. Sharp. Didn't he contact you in Stockton [60] and ask you to come down and visit him?

 A. No, he did not.
- Q. You hadn't corresponded or talked with him for awhile then previous to—
- A. I had never had Jack Sharp, I don't believe, ever wrote a letter in his life to anybody. If he did, I never got one.
- Q. And you just decided to go down there and see him that Friday night, is that right?
 - A. Yes.
- Q. But you hadn't written him in advance telling him that you would be there?
 - A. My wife wrote to his wife, Mrs. Sharp, and

(Testimony of Manfred E. Tuttle.) told her we were coming down to visit for a day or two.

- Q. I see. Your wives are pretty good friends?
- A. That is right.
- Q. You are in no way related to Mr. Sharp?
- A. Related?
- Q. Yes.
- A. I never saw him, never heard of him, until I started taking stuff from the warehouse, moving it down to Lomolo from up at Clearwater there in Oregon.
- Q. Mr. Atkins then told you in this conversation in his office on Monday that the job had already been filled, or something to that effect?
- A. He told me I had better go up and see—he said, "If Perkins [61] told you to come up on this job, you had better go up and see Mr. Wolcott, he is up at the main office, see him before he gets away."
- Q. Did he tell you at that time that Mr. Perkins was not project manager at Black Rock?
 - A. Atkins?
 - Q. Atkins.
- A. Atkins never told me that. Mr. Wolcott told me that.
- Q. You went then directly from the warehouse to Mr. Wolcott's office?
- A. Not Mr. Wolcott's office. He was in the main office up there at Black Rock.
 - Q. At Black Rock?
 - A. Yes. And at that time I couldn't get in there,

(Testimony of Manfred E. Tuttle.) so one of the boys pointed out his car and I just parked mine right close to it and stayed until he came out. Then I talked to him.

Q. Then you met Mr. Wolcott on Monday afternoon? A. That is right.

Q. And would you relate your conversation with

A. Mr. Wolcott told me that they had already hired a man and he was supposed to have been here that day, I believe he said. And I told him, "Well, Mr. Perkins told me to come up and get on that job there Monday." And that was the day I was there. And he says, "Well, Mr. Perkins has nothing to do with [62] this job." And I said, I told him it was strange, I thought, that a man could take a fellow off from a job with no authority to put one on.

Q. Did he tell you what Mr. Perkins' authority was, what he did?

A. He said he was just over Wishon, that is all he did. That is what Mr. Wolcott told me.

Q. Did you tell Mr. Wolcott that you were to take Jack Sharp's place?

A. That is what I was supposed to do. That is what Mr. Perkins told me.

Trial Examiner: The question was: Did you tell Mr. Wolcott that, that you wanted to take Mr. Sharp's place? Did you tell Mr. Wolcott that?

The Witness: Yes. I told him I come up there to take Jack Sharp's place. And he said they had already called a man for the job.

Q. (By Mr. Smith): And I think you testified

on direct examination that Jack Sharp had been told by Mr. Perkins that he was to go up to Wishon that same day; is that correct?

- A. That is right. I don't think he got away that day, but he was supposed to have gone that day.
 - Q. He was supposed to have gone that day?
 - A. Yes.
- Q. Did Mr. Wolcott say anything about Mr. Sharp's leaving [63] Black Rock and going to Wishon? A. Mr. Wolcott?
 - Q. Yes. Did he say anything to you?
- A. No, I don't think so. I never talked to Mr. Wolcott about Mr. Sharp other than to tell him that I come to take his place.
- Q. Did Mr. Wolcott at that time say anything about another warehouse job being open or likely to be opened in the next few weeks? Did he offer you any type of employment?
 - A. No. Absolutely not.
 - Q. What did he tell you?
- A. He told me that there might be something later on.
 - Q. What did he tell you to do?
- A. Nothing definite, but he told me to keep in touch with the office. And I done that for six weeks or so.
 - Q. Did he ask you for your name and address?
- A. He already had it in the office. He didn't have to ask for it. I had already left it there.
 - Q. You hadn't seen him before, though?
 - A. No. But I had been in his office and Mr. Per-

kins had given him my name. His secretary had my name and address when she took me in there. He had two or three men in there with him the morning that Mr. Perkins took me in-Mr. Wolcott, I mean, did-so he just gave it to the lady, or office girl, whatever she was, stenographer there. [64]

Q. What time in the afternoon did you talk to

Mr. Wolcott, approximately?

A. Well, I got back to Friant at 5 o'clock, so it must have been around 1:30, 2, maybe 2 o'clock. It could have been anyplace from 1 to 3.

A. That is right. Q. From 1 to 3?

- And you got back to Friant about what time? Q.
- A. About 5.
- A. Yes. Q. About 5?
- Q. Then you went to see Mr. Fudge?
- A. That is right.
- At his home? A. That is right. Q.
- And you told him that you had been up to Q. A. That is right. I did. the job?
 - Q. And why did you go to see Mr. Fudge?
 - What? A.
 - Q. Why did you go to see Mr. Fudge?
 - Why did I? A.
 - 0. Yes.

To see if he would clear me, that is all, why he wouldn't clear me.

Q. Of course, you had been told that the warehouse opening [65] up there—

A. I wanted to know why they were discriminating against me, that is why.

- Q. But didn't Mr. Atkins tell you that the job had already been filled when you went up there Monday morning, or Monday, to see him?
- A. Yes. But there was supposed to be—he told me also that there was another job that might be coming up in a few—
 - Q. He said there might be one coming up?
 - A. Yes.
- Q. And then you went back to Mr. Fudge and asked him why he was discriminating against you?
- A. That is right. I know I had been, when a man came from, when they brought another man in from the outside and the people on the job told me the man didn't even belong to the union when he first come here.
 - Q. Do you know who that man was?
 - A. No. I don't.
 - Q. Was he working there at the time?
 - A. He did work there.
- Q. At the time you had the conversation with Mr. Atkins?
 - A. No, he hadn't come in yet.
- Q. But he had been requested, as you understood it? A. Yes.
 - Q. And the job had already been filled? [66]
 - A. By him.
 - Q. By him?
 - A. Yes. He wasn't there yet, though.
- Q. Then, why did you ask Mr. Fudge if he were discriminating?
 - A. Well, he had already told me he wasn't going

to clear me for them jobs up there. And I wanted to know the reason why, why he was taking in other men that don't belong to the union and all, and putting them on the job, and me with a paid-up card, discriminating against me.

Q. I think you testified that Mr. Atkins had done the requesting for the man, that he had requested another man and that it had already been

settled, the man was coming in?

A. Mr. Atkins requested it? No, Mr. Atkins hadn't requested it.

Q. Mr. Atkins hadn't requested——?

A. He wanted a man, but not any particular one; he hadn't requested at that time.

Q. Are you sure of that?

A. I am absolutely sure.

Q. Did he tell you that?

He told me that Mr. Wolcott had somebody for this job. That is what he told me. So evidently he didn't know who it was.

That was before you saw Mr. Wolcott? Q.

That was before I saw Mr. Wolcott. [67] Α.

Then, apparently the job you had gone up there to seek had been filled already, is that right?

Mr. Yeates: I think this is getting to be argumentative, Mr. Trial Examiner. I think that he has answered this repeatedly and the record will show the answer to it. And I think any further inquiry on this line is just argumentative.

Trial Examiner: I will sustain the objection to

(Testimony of Manfred E. Tuttle.) this question because it has already been asked and answered.

- Q. (By Mr. Smith): When you went to see Mr. Fudge that evening did you ask him why he had sent this other individual up on that job instead of you?

 A. That is right.
 - Q. Or clear it up?
 - A. That is right. I sure did.
 - Q. What did Mr. Fudge say?
- A. None of my damned business. "I take care of my business. You take care of yours." Mr. Fudge was really on the prod. He was on the prod.
- Q. Had anybody told you at the job that Mr. Fudge had sent this man instead of you, or refused to clear you?
- A. When had anybody told me—they all knew that he had refused to clear me. Mr. Atkins did.
 - Q. Mr. Atkins did?

Mr. Yeates: Answer the question that he asked you.

The Witness: That is what he asked me. [68]

Trial Examiner: The question was: Did anybody at the job tell you that Mr. Fudge had refused to clear you? That is the question.

- A. Yes. Mr. Atkins did.
- Q. (By Mr. Smith): On that date?
- A. No. A later date.
- Q. But not on this Monday?
- A. Not at that time.
- Q. Nobody told you that Mr. Fudge had refused

(Testimony of Manfred E. Tuttle.) to clear you for the job that already had been filled on this Monday? A. No.

Q. Nobody told you?

A. Nobody; but Mr. Fudge told me that he wouldn't clear me.

Q. But you assumed that Mr. Fudge had not filled that job that day or that the job had not requested that man for that day?

A. I don't know what you are trying to get at.

I can't see any sense in it.

- Q. Are you sure that it was Mr. Fudge's doing that you didn't get the job that was supposedly open on Monday, the 25th of February?
 - A. Yes, it was open on—
- Q. That was your reason for going to see Mr. Fudge? A. Yes.
 - Q. And inquiring why? [69] A. Yes.
- Q. (Continuing): —I presume you went back to your trailerhouse; then, when was the next time that you contacted anybody about employment at Black Rock?
 - A. Well, my mail was coming in care of the Kings River Constructors, and I went up to Black Rock where I was supposed to have gone to work and one letter come back to me, and whoever wrote on it I don't know, but whether it was Mr. Atkins or who it was, but he said to call and get in touch

with him, get in touch with Mr. Atkins at the Haas Tunnel, there was a job opening up there. And I went out to see him.

- Q. And that was sometime in the early part of March?
 - A. That's right. The early part of March.
- Q. Around the 7th or the 8th of March, or the 6th?
 - A. I believe it was the first week of March, yes.
- Q. You hadn't then in the meantime gone back to Mr. Fudge. Had you gone down to the office, here in Fresno, of Kings River Constructors?
- A. Yes. I never went to see Mr. Fudge again after—
- Q. When did you first go down to the office in Fresno of Kings River Constructors?
- A. Every day; probably every two or three days, rather. [70]
- Q. When, after you had seen Mr. Fudge that day, after Monday?
 - A. I think it was that same week.
 - Q. That same week?

 A. I think it was.
- Q. How many days after Monday, approximately?
- A. I think maybe the next day I was down there at the office.
 - Q. Next day?
- A. I believe it was next day that I went down first.

Q. Who did you see in the office—or who did you try to see? Who did you ask for?

A. Well, I saw Mr. Perkins—Mr. Perkins happened to be in the office that day, I believe.

Q. He did?

A. Yes. He come in for something, he happened to be in town and he was in there.

Q. Did you talk to Mr. Perkins?

A. I did.

Q. And where did you talk to Mr. Perkins? In his office?

A. Right in the hallway. He saw me out there and he knew me and he come out and talked to me.

Q. Would you relate the conversation you had with Mr. Perkins that day?

A. He said it might be a few days, he said, "It might be a few days, Mac, but we will get a job for you."

Q. Did you tell Mr. Perkins that you had been up to the Black [71] Rock project and they didn't

have a job for you? A. Yes, I did.

Q. Did you tell him of your conversation with Mr. Fudge the night before?

A. No, I don't believe I did. But I told him about that he had refused to—I don't believe I told him about the conversation at his home, but I told him about that he had refused to clear me.

Q. Did Mr. Perkins then say anything else or did you say anything else during that conversation?

A. I can't recall anything that would interest this hearing.

Q. Mr. Perkins said, "We will try to find you a job and it will be a matter of a few days"?

A. Yes; he said, "Don't worry. We will have a job for you, Mac." That is what he said. But I did keep worrying, and I didn't get one.

Q. After you talked to Mr. Perkins there at the

office did you talk with anybody else?

A. I talked to Mr.—I don't remember whether it was the same day, whether I talked to Mr. Wolcott that day or not, but I talked to him the next day or so afterwards.

Q. Where did you talk with him?

A. In his office.

Q. Here in Fresno, in his office?

A. Yes. [72]

Q. This was after you had first seen him up there at the job, up at Black Rock?

A. That is right.

Q. Out at his car? A. Yes.

Q. Now, you are not sure that it was this-I presume Tuesday morning, after you talked to Mr. Perkins, you don't know whether it was the same day you talked to Mr. Wolcott?

A. I don't remember whether it was that day, that same day, but it was that week, anyway.

That week? Q. A. That same week.

Q. Would you relate more or less the conversation that you had with Mr. Wolcott at that time?

A. Well, he just stalled along, that is all. He just kept stalling me, that is all, if anything.

- Q. He said there was just nothing available at the time?
- A. He told me there was nothing available now at the time; he told me there would be, there would probably be another job opening; but finally he later on did call me about a job that might come up.
- Q. Did he tell you at that time who employed the people for the projects? Or did he tell you who would contact you?
- A. No, he didn't tell me who would contact me. He would, I suppose. [73]
 - Q. He would?
- A. He would contact me if there was anything available that he knew of.
- Q. Did he say that he would get ahold of you if he found anything for you?
- A. Yes. My telephone number was available to him there, and my address.
- Q. Then, you didn't see Mr. Wolcott again for a few days, you said, but you dropped back to the office once in awhile to make inquiries?
 - A. That is right.
 - Q. Who did you see on those occasions?
- A. If Mr. Wolcott was there, I would see him. If he wasn't there, I would talk to the girl in the office. That is all I could do.
- Q. I see. And what would the answer be when you talked to him at the office? A. Nothing.

- Q. Nothing available at the time?
- A. Nothing available, nothing. Until Mr. Wolcott finally called me over the telephone one night, I believe he said—it was a two-way—and he got me on my telephone number here and he talked to me, over the two-way.
 - Q. The mobile radio?
- A. Yes. But by the time I got to the telephone there was [74] something developed that I couldn't get ahold of him. Anyway, I called, I knew who it was, he had left a note there, and I called him at his office.
- Q. That was later, that was after you got this note on that letter?
- A. That is right. A long time after that. That was a long time after that.

Mr. Smith: Mr. Examiner, Mr. Knack suggests we ask for a recess at this time for lunch because the cross examination may continue for sometime.

Trial Examiner: Well, I was going to stop you at 12:30. Do you want to stop now instead?

Do you have any objection, Mr. Yeates, to stopping now?

Mr. Yeates: I have no objection.

Trial Examiner: All right, we will come back at 2 o'clock.

(Whereupon, at 12:12 o'clock, p.m., the hearing was recessed, to be reconvened at 2:00 o'clock, p.m., of the same day.) [75]

Afternoon Session

(Whereupon, pursuant to the taking of the recess, the hearing was resumed at 2:00 o'clock, p.m.)

Trial Examiner: Proceed, Mr. Smith.

MANFRED E. TUTTLE

resumed his testimony as follows:

Cross Examination—(Continuing)

- Q. (By Mr. Smith): Mr. Tuttle, have you at any time after you last talked with Mr. Atkins and then later with Mr. Wolcott, have you approached any official of Kings River Constructors or a representative of Kings River Constructors, asking that you be given a settlement for being denied employment? A. No.
 - Q. You had felt that you had been denied employment by Kings River Constructors, is that correct? A. Yes; I am sure of it.
 - Q. Had you approached Mr. Fudge or anyone at the union hall for a settlement from them?
 - A. Not since the time I was to his house, no.
 - Q. Not since that time. Did you approach an attorney to represent you for a settlement?
 - A. No.
 - Q. Would you describe the circumstances in bringing your charges to the NLRB's attention?
 - A. I don't know as I know just what you mean.
 - Q. Well, I mean some way you must have con-

(Testimony of Manfred E. Tuttle.) tacted the NLRB or they must have contacted you. Is that correct?

- A. I contacted them. They did not contact me.
- Q. Where did you contact them?
- A. At their head office in San Francisco.
- Q. You went to San Francisco to see them A. I telephoned. there?
 - Q. I see. At anybody's suggestion?
 - A. No. None except my own.
- Q. You felt that that was the proper office to contact for such things?
- A. I knew it was the only place I could get a break.
 - Q. They sent an investigator to see you?
 - A. They did.
- Q. They did. And that was sometime in May, was it?
- A. Yes. I believe it was. His name was Albert Schneider.
 - Q. And did he present to you a form of charge?
 - A. Yes, he did.
 - Q. For you to sign? A. Yes.
 - Q. He took your statement?
 - A. That is right, he took my statement.
- Q. Have you, arising out of this hearing, or arising out of the charges, excuse me, the charges made, been offered a settlement of your claims by anyone? [77]
 - A. I will have to ask—

Mr. Yeates: I am going to object to this line of questioning. It is not germane at all to the hear-

ing we are concerned with. And unless he is directing the attention of the witness to matters of his own with another attorney, outside the processes of the Board, as concerned a charge filed and the handling of the matter by the General Counsel from that point on.

Mr. Smith: Mr. Tuttle answered that he had not contacted an attorney.

Q. (By Mr. Smith): You have not contacted an attorney at any time, have you, concerning your charges? A. No.

Trial Examiner: The only point that I see that would be relevant and material is whether, as provided for in the Administrative Procedures Act, whether a reasonable opportunity has been offered to the Respondent to discuss the matter of settlement.

Mr. Smith: I think that—

The Witness (interrupting): Could I explain something to you?

Trial Examiner: No. This is not addressed to you. I am addressing this to counsel.

Mr. Smith: I am seeking to ascertain whether he felt he, first, had sought to determine whether the employer or union [78] would offer him a settlement of his so-called claim.

Trial Examiner: Well, I think once he has filed a charge, once the Board has taken jurisdiction, investigated and issued a complaint, and the complaint is based on the charge, the government com(Testimony of Manfred E. Tuttle.) plaint, I think this witness's various and sundry motives in that respect would not be material.

Of course, it is required that the opportunity be afforded for a settlement of the issues, whether the parties may determine to make a settlement—but I take it that you are not questioning that that opportunity has been afforded?

Mr. Smith: No; as a matter of fact, we are not questioning that. We understand that a settlement has been entered into by the union of similar charges against it.

Mr. Yeates: That is with the Board; not with the employer.

Mr. Smith: The charging party gets about \$500 from that, Mr. Tuttle understand that—

Mr. Yeates: I don't know what this discussion is. I don't think it is relevant at all. But as far as the Board knows, there has never been any offer of any type of that nature made to this gentleman on a settlement.

Mr. Smith: May I ask the question, without an answer to the previous one, may I ask this question, whether Mr. Tuttle knows that a settlement has been entered into between the Board and the union by which Mr. Tuttle will receive a [79] sum of money of approximately five hundred dollars?

Mr. Yeates: I object to this again.

Trial Examiner: Well, of course—excuse me.

Mr. Yeates: I object to that, if he is directing this to the Board procedures. Now, if something is (Testimony of Manfred E. Tuttle.) on the side or something like that, I have no ob-

jection to that.

Trial Examiner: I take it this question is directed to Board procedures, whether or not the agents of the General Counsel have entered into a settlement agreement with the union involved here with respect to paying this witness a sum of money. Is that what your question goes to?

Mr. Yeates: For back wages, is that what you are referring to?

Mr. Smith: Yes, for supposed back wages, yes, to make him whole.

Trial Examiner: Are you objecting to taking an answer on that? I just want to get this straight.

Mr. Yeates: I am not objecting if he is going to ask the witness if he knows whether or not a settlement has been entered into between the Board and the union whereby the union has agreed to make the witness whole for any loss of wages, if any, he encountered.

Trial Examiner: You don't object to that ques-

tion?

Mr. Yeates: If it is on that basis.

Trial Examiner: That is what I understand the question to be. [80]

Mr. Yeates: I still have my basic objection. I don't think it is relevant and material.

Trial Examiner: Well, there is a little latitude there, from my point of view. I think we will take the answer, if you want it.

Mr. Smith: I would like to hear it.

Trial Examiner: Do you know of any settlement made on your behalf by the Board and the union?

The Witness: Yes, I do; but what amount of anything it is to be, not that.

Trial Examiner: You don't know what amount? The Witness: No.

- Q. (By Mr. Smith): You understand you are to be made whole in wages lost?
 - A. Yes, I understand that.
- Q. And at the time Mr. Schneider visited you and after he took your statement did he say anything to you which would give you the expectation that you would receive a sum of money for—
- A. No; Mr. Schneider is simply an investigator, as far as I am understanding.
- Q. Did any other agent of the Board give you any reasons to expect—
- A. No, no other reason, excepting when Mr. Yeates took it up. [81]
- Q. I see. Mr. Tuttle, at any time did any representative of Kings River Constructors, who you now know to be a representative of Kings River Constructors, offer you employment and then advise you that you were denied employment because the union refused to clear you?

A. Did any of them—?

Trial Examiner: Read the question back to him. Listen to it carefully.

(Last question read.)

Trial Examiner: Do you understand that, Mr.

Tuttle?

The Witness: Yes, I understand. They want to know if anybody——

Trial Examiner: Well, read him the question

again.

(Last question re-read.)

Mr. Yeates: I think the question is duplicitous. Trial Examiner: I thought it was fairly clear.

Go back and read it again before we get more on the record.

(Last question re-read.)

Trial Examiner: If you don't understand it, Mr. Tuttle, just say so.

A. Yes.

Q. (By Mr. Smith): When?

A. Mr. John Atkins called for me by name. And they told me that I was not eligible for the job up there. [82]

Q. He called you by name?

A. That is right. He told me so, himself.

Q. And stated that you were not eligible for the job?

A. That I was not eligible for a job up there.

Q. For what reason?

A. Because the union wouldn't clear me. He talked to Mr. Fudge, called——

Q. John Atkins?

A. John Atkins called him on the telephone, and he asked for me by name.

Q. While you were there?

- A. No. But he told me that.
- Q. In your presence?
- A. No. But he told me that, and I believe him.
- Q. Mr. Atkins told you that, is that right?
- A. That is right.
- Q. That he had called Al Fudge and asked for you by name?
 - A. That is right.
 - Q. And Al Fudge refused to clear you?
 - A. That is right.

Mr. Smith: That is all.

Redirect Examination

- Q. (By Mr. Yeates): Mr. Tuttle, on the first contact with the union for your clearance, in reference to the Black Rock job, do you recall what day that was that you went to see Mr. Fudge? [83]
 - A. It was on a Monday.
- Q. When was that, in reference to the time you had talked to Mr. Perkins?
- A. Well, that would be the first Monday after the Saturday I talked to Mr. Perkins. That would be the day after—well, the next day would be Sunday and the next day is Monday—that is when I talked to him.

Mr. Yeates: That is all.

Trial Examiner: Do you have anything further, Mr. Smith?

Mr. Smith: No.

Trial Examiner: You are excused, Mr. Tuttle.

(Witness excused.)

Mr. Yeates: At this time, Mr. Trial Examiner, I will submit a stipulation to be entered into between the General Counsel and Respondent, the stipulation being that John Atkins, the warehouse foreman at the Black Rock project, was at all times material herein a supervisor in that position as defined by the Act and in that capacity had the authority to effectively recommend hiring and discharge, directed employees in the warehouse, and was salaried.

Trial Examiner: So stipulated?

Mr. Smith: So stipulated.
Trial Examiner: All right.

Mr. Yeates: I would like to call Mr. Sharp, please. [84]

JACK SHARP

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

- Q. (By Mr. Yeates): State your full name.
- A. Jack Sharp.
- Q. And that is spelled S-h-a-r-p-e?
- A. S-h-a-r-p.
- Q. P, no e? A. No e.
- Q. Where is your residence?
- A. 3971 Market Street, Friant, California.
- Q. What is the field of work you are engaged in?

(Testimony of Jack Sharp.)

- A. Well, right at the present time I am not engaged.
 - Q. What line of work have you followed?
 - Warehouse, parts, in construction.
- How long have you been employed in the capacity of warehouseman?
 - A. I guess 35 years.
 - Q. And are you a member of any union?
 - A. Yes, I am.
 - Q. What union?
- A. I have an operating engineer's card at the present, and I have a withdrawal from the Teamsters.
 - Q. What local is that? [85]
 - A. Warehousemen or Teamsters—
 - Q. Teamsters?
 - A. (Continuing): —431, I believe.
- Q. Now, you were employed at Black Rock project in February of '57? A. Yes, sir.
- Q. There has been earlier testimony here that in February Mr. Tuttle called on you at your home.
- A. Yes, sir; sometime in the latter part of February I came down from the job on a Friday night, I believe, and Mr. and Mrs. Tuttle was at my place.
 - Q. And that was at Friant?
 - A. That was at Friant.
 - Q. Do you recall the date?
- A. Well, it has been called around the 27th, so I will go along with that.
 - Q. It was on a Friday, you say?

(Testimony of Jack Sharp.)

A. It was on a Friday evening.

Q. And did you accompany Mr. Tuttle to Fresno to see Mr. Perkins?

A. The following morning, on a Saturday, yes.

Q. State whether you had any conversation with Mr. Perkins at that time. A. We did.

Q. All right, where was that? [86]

A. At the coffee shop in the Fresno Hotel.

Q. And that was the following morning you stated?

A. That was Saturday morning.

Q. Who was present?

A. Well, there was Mr. Perkins, Tuttle, myself, Del Billings, there was Max Daly, I believe, an engineer, and one other engineer, I believe, by the name of—let me see—Newton.

Q. Tell the Trial Examiner what the conversation was that you had with Mr. Perkins at that time, and identify who made the statement.

A. Well, to make it clear, I will have to go back to the evening before, Friday evening before I left.

Q. All right, I think that is probably better.

A. Mr. Perkins came into the warehouse at the Haas Tunnel where I was working and informed Mr. Atkins that he was ready to have me transferred back up to Wishon at the earliest date possible, to get someone to replace me.

Q. That is, Mr. Perkins told Mr. Atkins that?

A. That is right.

Q. What day was that?

A. That was on Friday; it must have been the

26th because the Saturday was the 27th, the Saturday following.

- Q. When was it in relation to the day Mr. Tuttle appeared at your home?
- A. It was the same day that Mr. Tuttle appeared at my home, [87] when I got home.
 - Q. The same day? A. That is right.
- Q. Had you known about this transfer prior to that time?
- A. I knew all winter I was supposed to go back up there, but I did not know it was to happen at that time, when it was to happen until that evening.
- Q. Who informed you you were to be transferred to Wishon?
 - A. Well, I guess Mr. Atkins did, that afternoon.
- Q. But you stated earlier you had heard that you were to be transferred——
- A. Well, before I left Wishon, sometime early in December, when it snowed us out, the year before, why, that was understood between some of the superintendents there; Mr. Perkins understood it, I believe, and master mechanic Chet DuPron.
- Q. That you were to be transferred to Wishon, back to Wishon?

 A. That is right.
- Q. And then you stated that on that Friday Mr. Perkins came into the warehouse, told Mr. Atkins that you were to be transferred at that time?

 A. Yes, sir.
- Q. All right; then you met Mr. Tuttle that evening, you say? A. Yes, sir.

Q. Do you recall what conversation you had with Mr. Tuttle?

A. Well, I can't—I can't recall. It had been almost a [88] year, I guess, since I had seen him, and him and his wife came down for a visit.

Q. Was there any discussion of your transfer

to Wishon?

A. I told the folks that I was being transferred back to Wishon as soon as they could get a replacement for me; and Mac maybe suggested or I suggested to Mac, I don't know which way around it went, that he might be a good replacement for me at Black Rock.

Q. Now, what was your purpose in going to

Fresno on this Saturday morning?

A. To see Bert concerning about when he wanted me up there. I understood it was at the earliest date possible, and whether Mac could replace me and make it a little earlier.

Q. When you say "up there," is that Wishon

you are referring to? A. That is right.

Q. Then, with that background, do you recall the conversation you had with Mr. Perkins at Fresno on that Saturday?

A. Well, I won't say exactly, but it is awfully close. I met Bert and asked him when he was ready for me and he said as soon as I could get replaced, I believe, at Black Rock. "Well," I said, "how about Mac being a replacement for me?" Well, he seemed to think that was all right and he asked Mac how he was set up with the union and

Mac told him he was still a member of the Teamsters Union and Bert told him to get [89] his card at the union in Fresno, get transferred—or I don't know what they call it—a traveler's card, he might have mentioned that, they do leave their mother local on a traveler's card sometimes; but anyway, to make himself right with the union in Fresno.

- Q. Did he or did he not tell him to report to work?
- A. I don't recall that. But he did tell him to get his card in order.
- Q. Do you know whether or not he made any statement with regard to registering?

 A. No.
- Q. Were you at Black Rock project when Mr. Tuttle came up to see Mr. Atkins? A. I was.
- Q. Where were you at that time, in relation to Mr. Atkins and Mr. Tuttle?
- A. Well, I was back in the main room at the warehouse; and Mac knew John Atkins before and he went into the office where John was working—that is a little office up in the corner of the main warehouse—and I was on the warehouse floor.
- Q. Do you know whether or not Mr. Tuttle went directly into the office when he came to the warehouse?
- A. No, he did not. He came through the main warehouse.
 - Q. Was that where you were?
 - A. That is where I was. [90]

- Q. What happened after Mr. Tuttle got there, as best you can recall?
- A. Well, I told him he would have to go in and see John. I believe at that time, I understood—that was the following Monday, I guess, after I had seen Bert down in Fresno—they had hired a man to replace me; but he wouldn't be there for maybe a week.
- Q. Did you have any discussion with Mr. Atkins concerning Mr. Tuttle before the time Mr. Tuttle arrived at the project? A. I did.
- Q. What was that conversation between you and Mr. Atkins, as best you can recall?
- A. Well, it was nothing out of the ordinary, I don't think. I just told him that at the conversation Bert and Mac and me had down at the Fresno Hotel. And he informed me at that time that there was another man hired to take my place.
 - Q. When were you transferred to Wishon, effective when?
 - A. The following weekend after the 27th, the first weekend in March.
 - Q. Did you work at Black Rock project after that time?

 A. No, sir.
 - Q. You are a personal acquaintance of Mr. Tuttle's are you? A. Yes.
 - Q. How long have you known Mr. Tuttle?
 - Λ. Since 1953. [91]
 - Mr. Yeates: I have nothing more.

Cross Examination

- Q. (By Mr. Smith): Mr. Sharp, you have been acquainted for sometime with Bert Perkins, is that correct?
- A. I think I met Bert Perkins for the first time in 1952.
 - Q. In 1952? A. Yes.
- Q. But you have worked at various times on projects in which he has been superintendent, project manager? A. Yes.
 - Q. Specifically at Beardsley? A. Yes.
- Q. He was general superintendent at Beardsley, is that correct? A. Yes.
- Q. You didn't work directly for him, you worked under the master mechanic, is that correct?
 - A. Yes.
- Q. Even when you were for a short time warehouse manager?
 - A. I still had a master mechanic for a superior.
- Q. As your superior. And then you served as warehouse manager only a short time there, is that correct?

 A. I don't think it was long.
 - Q. You never were warehouse manager?
 - A. Oh, yes. A short while. [92]
- Q. Mr. Sharp, what was your understanding of Mr. Perkins' position with respect to the construction on Kings River?
 - A. I don't follow you.
 - Q. What position does Mr. Perkins, or did Mr.

Perkins, have with respect to construction in that area? A. He was project manager.

- Q. Project manager of what project?
- A. Morrison, Walsh & Perini.
- Q. What were they constructing at that time?
- A. Wishon Dam.
- Q. When you worked for Kings River Constructors who were you working for? Who was your project manager?
 - A. My project manager, I believe, was Jack

Delay.

Q. Jack DeLay. And at that time, of course, your warehouse manager was John Atkins?

A. Right.

- Q. Was there any connection in your mind between Kings River Constructors and Morrison-Walsh-Perini? A. Well, yes.
 - Q. In what way? A. Well——

Q. If you know.

A. They are more or less sponsored by the Morrison-Knudsen Company. There was a lot of work exchanged backwards and forwards; employees, more or less the same. [93]

Q. But Mr. Perkins was not project manager at Black Rock and had no authority, that you

knew of, with respect to Black Rock?

A. Well, no; there was another man at Black Rock.

Q. As a matter of fact, the two projects are some distance apart, aren't they?

A. That is right.

- Q. About how far apart, would you say?
- A. Oh, I would say they was 20 miles.
- Q. Twenty miles apart. You state that you have been transferred from Wishon to, when Wishon was closed down for the winter, to the Black Rock project, with the understanding that you would return to Wishon?

 A. That is right.
- Q. Did you wait for Mr. Perkins or the Wishon management to request you to come back to work at Wishon or did you ask Mr. Perkins on various occasions?
- A. Well, Mr. Perkins was there, I guess it must have been on the 26th of February, and asked John Atkins for me to be sent back up to Wishon.
- Q. He came into the warehouse and talked with Atkins, is that correct? A. That is correct.
- Q. And asked Mr. Atkins to arrange for your—— A. Release. [94]
 - Q. Release? A. That is correct.
 - Q. So you could go back to work at Wishon?
 - A. Yes, sir.
- Q. Did you ask at any time for a change of employment? Did you ask to return to Wishon?
- A. I don't believe I did. Or I knew I couldn't return until the season opened.
- Q. But you were satisfied to stay at Black Rock, as far as you were concerned?
- A. Well, you have got to work somewhere. It doesn't matter where. But I had been with that bunch at Wishon for a number of years, I liked to work with them, I was happy to go back.

Q. Were you seeking work of a different nature at the time?

A. Well, not exactly a different nature; but it turned out that I had to activate an Operating Engineer's card. I went to work with the Engineers for a little more money.

A. At Wishon. Q. At Wishon?

Q. Were you actually transferred from Black Rock to Wishon or were you terminated at Black Rock and hired at Wishon?

A. Well, now, that would have to be answered by Jim Wolcott. He knows more about that than I do. I know they told me when I—the following weekend, that I could go on back to Wishon, there would be a place there for me. [95]

Q. Do you remember—

A. (Interrupting): I don't believe I went through the Fresno office; I would have to get cleared by the Operating Engineers. And I didn't even do that, although I did get ahold of one of the business agents and he told me to go on up there and go to work the following Monday morning and he would take care of things.

Q. That is, go up to work at Wishon?

A. Right.

Q. And he would take care of your being—this is the Operating Engineers' business agent, is that A. That is right. right?

Q. At the time you went to work at Wishon

had you been cleared through the union?

A. Yes, sir. When I first went to work at

Wishon I cleared through Local 431, I believe it is.

Q. And then again when you left Wishon and went to Black Rock were you cleared through the union? A. No, sir.

Q. As a matter of fact, Mr. Sharp, didn't you talk with John Atkins some three to four days before this Monday in question—before Monday, the 25th of February, I believe the date is—didn't you talk with John Atkins concerning Mr. Tuttle?

A. No. I didn't talk with him until after I came down that [96] Friday, after I talked with Bert Perkins—or Bert was there in the warehouse.

Q. That is the first you knew that you would be going to Wishon—

A. I didn't know whether Mac existed, even, then or not.

Q. And then that Friday Mr. Tuttle's visit was a surprise to you? A. That is right.

Q. And after you talked to Bert Perkins that Saturday morning, then the next morning when you went back to work up at the warehouse—

A. Right.

Q. You talked with Atkins about Mr. Tuttle taking your place? A. Yes, sir.

Mr. Yeates: Are you through, Mr. Smith?

Mr. Smith: Yes.

Redirect Examination

Q. (By Mr. Yeates): You stated on cross examination that other employees had been transferred from Wishon to Black Rock. Was that other em-

ployees that were employed at Wishon that were transferred from there to Black Rock project?

A. Well, yes, they were, some. Well, I couldn't say they were transferred, but they were working there, the boys that I had worked with throughout the summer, when I went down to [97] Black Rock they were working down at Black Rock.

Q. On the matter of your going back to Wishon, had they told you that they were discharging you and rehiring you for that job or did they tell you they were transferring you to Wishon?

A. That I couldn't answer without—

Q. You don't know?

A. They told me I would have to get my Engineer's card in order.

Q. Who told you you were going back to Wishon? A. Bert Perkins.

Mr. Yeates: That is all.

Trial Examiner: Anything further?

Mr. Smith: Nothing further here.

Mr. Yeates: Mr. Sharp would like to be excused from the hearing room, Mr. Examiner.

Trial Examiner: Will you desire this witness again, Mr. Smith?

Mr. Smith: I don't think so, Mr. Examiner.

Trial Examiner: You are excused, sir.

(Witness excused.)

Mr. Yeates: Mr. Maples, please.

LEON MAPLES

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [98]

Direct Examination

- Q. (By Mr. Yeates): State your full name, A. Leon Maples. please.
 - Q. Where is your residence?
 - A. 1323 Harvard, Fresno.
 - Q. What is your present employment?
 - A. Modern Electric.
- Q. That is by a company not concerned in this matter?
 - A. No, sir—or yes, sir, that is right.
- Q. Were you employed at the Black Rock project for Kings River Constructors?
 - A. Yes, sir.
 - Q. What was the date of your employment?
- A. From near the end of the year of '56 until April the 12th, 1957.
 - Q. Who hired you for that job?
 - A. Mr. Atkins.
 - Q. Mr. Atkins, at the Black Rock project?
 - A. Yes, sir.
- Q. What was your duty at the Black Rock project, your job there? A. Warehouseman.
 - Q. Who did you work under?
 - A. Mr. Atkins.
- Q. Were you present at the warehouse on the date in February when Mr. Tuttle came to the project? [99] A. Yes, sir.

Q. The first time? A. Yes, sir.

Q. Will you tell the Trial Examiner what you recall of that incident?

A. Well, I didn't know Mr. Tuttle, but Jack introduced me to him.

Q. That is Jack Sharp?

A. Yes, sir. Jack Sharp, Mr. Sharp, introduced me to him. And I don't remember it, but we must have talked a few minutes. And Jack Sharp knew that he was leaving Black Rock and he recommended Mr. Tuttle to Mr. Atkins. I think his words were that Mr. Tuttle was a good warehouseman and would be a good replacement for him.

Q. Mr. Sharp made that statement to Mr. Atkins? A. I believe so.

Q. Were you present when that statement was made? A. Yes, sir.

Q. When was that in relation to the time that Mr. Tuttle appeared at the job?

A. Well, that was the first time Mr. Tuttle appeared at the job.

Q. Right at that time, when he came?

A. Yes, sir.

Q. Where did Mr. Tuttle go at that time? [100]

A. Well, as I recall, Mr. Tuttle and Mr. Atkins stepped off into another part of the warehouse, either the office or the dock—I was on the main area of the warehouse floor—they stepped into either the office or out on the dock, I can't remember which, and carried on a private conversation that I didn't hear.

- Q. Did you see where Mr. Tuttle went after he left the warehouse?
 - A. I don't seem to be able to remember it.
- Q. What other employees did you have working with you as warehousemen at the time, this date?
- A. There was a little fellow by the name of Weatherman who was working graveyard—you are speaking around the last of February?
 - Q. Yes, at the time Mr. Tuttle came in.
- A. Well, Jack was, Mr. Sharp was on day shift and I was on swing and this Weatherman was on graveyard. I believe that's the way it was.
- Q. Were you working at the warehouse on the day in March when Mr. Tuttle came to the warehouse?

 A. Yes, sir.
 - Q. Do you recall what date that was?
- A. Well, it seemed to me like it was around the middle of March, right close to the 15th, somewhere in there, 14th, something in that vicinity. [101]
- Q. And did Mr. Tuttle and Mr. Atkins have any conversation at that time that you know of?
 - A. Well, yes.
- Q. Were you present in the warehouse on that date when Mr. Tuttle came in?
- A. Yes. Yes, I was. He came up that time with a fellow by the name of "Irish"—Ben Tracy is his name. Let's see, now. Yes, he asked Mr. Atkins what happened that he didn't get the job there at Black Rock. And John, or rather Mr. Atkins, said that he put in a requisition by name for Mr. Tut-

tle and the responding answer was that Mr. Tuttle was not available.

Q. Now, Mr. Atkins made that statement toto whom did he make that statement?

A. To Mr. Tuttle. I was standing right nearby, within a couple of feet, and overheard the statement, the conversation.

Q. Was there any other conversation that you recall of by Mr. Atkins to Mr. Tuttle at that time regarding that job?

A. Well, at that time the job had been filled

by this Myers, if I remember correctly.

Q. Well, now, are you speaking about the March time Mr. Tuttle was there or— A. Yes.

(Continuing): Or the February time?

A. Yes, sir. [102]

Q. Mr. Myers was working with you the second time when Mr. Tuttle came?

A. I believe so.

Q. How long did Mr. Myers continue to work there?

A. He only worked there two weeks.

Q. After the time he arrived there he worked two weeks?

A. Something in that vicinity, yes.

Q. And the conversation that you spoke of between Mr. Tuttle and Mr. Atkins, that was in the warehouse?

A. I kind of think it was in the warehouse office. Of course, this is only a distance of 15 to 20 feet. I mean the office and the warehouse are just

a door between the two of them, is the only difference.

Q. Do you recall what statements Mr. Tuttle made at that time, if any?

A. Well, he told us that he had had a disagreement with Mr. Fudge and he felt sure that Mr. Fudge was responsible for him not being able to obtain a clearance.

Q. Was this statements to you and to Mr. Atkins? A. Yes, sir.

Q. And then the statement by Mr. Atkins, again, was what?

A. "Well," he said, "I put in a requisition for you, that is all I can do. I am not the labor coordinator and I have no responsibility over what happens in town."

Q. Was there any replacement hired for Mr. Myers that you know of? [103]

A. Well, yes. Mr. Ryan was hired when Myers left.

Q. Do you know approximately when it was that Mr. Ryan came to work?

A. Well, it had to be around the 15th of March, in that area.

Q. You don't know the exact date?

A. Oh, no.

Q. What were the circumstances of your leaving the Black Rock project?

A. Well, I was getting married and by working as an hourly personnel there, there was no such thing as a vacation or taking a few days off, so it

was a choice of quitting or not having those days off.

Q. Had you given them notice of your impending termination?

A. I am sure I gave them at least two months'

notice.

Q. Before you left? A. Yes, sir.

Q. Your termination was as a result of your A. Yes. own choice, then?

Q. At any time after this did you ever have any conversation with Mr. Fudge concerning Mr. Tuttle?

A. Oh, Mr. Fudge came up to the warehouse one day.

Q. When was that? A. I don't know.

Q. How long after the time that Mr. Tuttle had been there? [104]

A. After Mr. Tuttle had been there, probably a week or maybe 10 days.

Trial Examiner: Was that after the first time Mr. Tuttle had been there?

The Witness: The second time after Mr. Tuttle had been there.

Q. (By Mr. Yeates): March——?

A. Yes, probably around the 7th or 8th of March; right in the first 15 days of March there.

Q. You state it was after the second time Mr. Tuttle had been there, about a week after that that A. Yes. Mr. Fudge came to the property?

Q. Tell the Trial Examiner what, if any, con-

versation you had with him at that time concerning Mr. Tuttle.

A. Well, I asked Mr. Fudge why we didn't get Mr. Tuttle up there as a warehouseman and Mr. Fudge said, "Well, that boy is too young to be telling me how to run my union." I believe that is what he said, or the implication.

Q. What was your reason for asking Mr. Fudge this question? A. Well, I was——

Mr. Smith: Just a minute. Aren't we going a little far afield?

Mr. Yeates: Are you objecting?

Mr. Smith: I object to this. I think it is outside the realm of the— [105]

Trial Examiner: All right, do you object?

Mr. Smith: Yes.

Trial Examiner: Sustained. We won't go into his reasons. We will take anything he said, though, to Mr. Fudge.

Mr. Yeates: All right.

Q. (By Mr. Yeates): Can you recall the question you asked Mr. Fudge at that time concerning Mr. Tuttle?

A. I believe the only question I asked Mr. Fudge was the one that I just gave you a minute ago.

Q. That was the only one? A. Yes, sir.

Q. All right. And did Mr. Fudge make any reply then other than that which you have already given to us?

A. Not on this subject that is involved.

Q. Were you ever informed from the company that there was to be an elimination of a shift at the Black Rock project?

A. Oh, I quit on the 12th and the 13th the elimination of two men or two shifts, which would be the swing and the graveyard, was to develop—well, I think we found out about it maybe Thursday or Friday. It wasn't enough notice that you could say it was a notice.

- Q. When was this notice in relation to the date you terminated?
 - A. It was the day after I terminated.
 - Q. The day after you terminated? [106]
 - A. Yes, sir.
 - Q. Had there been any prior knowledge or information to that regard that you know of, of a shift elimination?
 - A. No, sir. No, sir.

Mr. Yeates: That is all.

Cross Examination

Q. (By Mr. Smith): Mr. Maples, at the time Mr. Tuttle first came to the Black Rock project, it was in the latter part of February, we have established, I believe, on Monday, February the 25th; what time in the afternoon, or morning, was that, as you recall?

A. Well, I was trying to figure out awhile ago what I was doing in the warehouse at that time, and I believe it was around 3 o'clock. I generally

showed up early to relieve Mr. Sharp. I was on swing shift, which changed at 4 o'clock.

Q. At 4 o'clock?

A. Yes. So I would just guess and say that it was about 3 o'clock.

Q. At that time you were not working at the warehouse? A. No.

Q. You were just standing there, is that correct? A. More or less, yes, sir.

Q. And, as you recall, Mr. Tuttle came first to see Mr. Sharp? A. Yes.

Q. Did you see him come into the building?

A. Yes, I believe I did. [107]

Q. And then did he go directly to Mr. Sharp? Do you recall?

A. It's kind of a difficult question, it is kind of difficult to answer that question. There at the warehouse there's a counter separating the dock or the entrance of the warehouse from the interior of the warehouse and, unless I am mistaken, Jack and I were standing at the counter of the warehouse, and I believe Mr. Tuttle walked up to the counter from the outside of the dock.

Q. And Mr. Sharp introduced you to Mr. Tuttue? A. Yes, sir.

Q. Where was Mr. Atkins at this time?

A. Well, I believe he was in the office. That would be to the north, say, 20 or 30 feet.

Q. Did Mr. Atkins come out to meet Mr. Tuttle?

A. I think so.

Q. Or did Mr. Sharp go in to Mr. Atkins' office and ask him to come out?

A. No; I think that Mr. Atkins came out into the interior of the warehouse.

Q. I see. And then I believe you stated that Mr. Atkins and Mr. Tuttle went off to the corner and had a conversation; is that correct?

A. Mr. Sharp introduced Mr. Tuttle to Mr. Atkins, and the only thing I heard in that conversation was Jack's recommendation of [108] Mr. Tuttle to Mr. Atkins.

Q. And that is all you heard?

A. To my memory, yes.

Q. That is, Jack Sharp recommended Tuttle as a replacement for him to Mr. Atkins?

A. Yes.

Q. Did you know at this time that Jack Sharp was terminating at Black Rock? A. Yes.

Q. And going to Wishon? A. Yes.

Q. Had he mentioned it previously to you?

A. Well, I can't answer that question. My memory is not that good. Jack, I am sure, told me about the fact that he was going to Wishon just as soon as he found it out.

Q. Did you see Mr. Perkins the previous Saturday? A. Me?

Q. Yes. A. No.

Q. You didn't see Mr. Perkins come into the warehouse and talk to Mr. Atkins?

A. Well, I don't remember it.

Q. To your knowledge, when Mr. Atkins and

Mr. Sharp went off to talk, did you have any duties in the warehouse or were you attending to any work at all at that time? [109]

A. Well, your statement there was when Mr. Atkins and Mr. Sharp went off. I don't recall—

Q. Excuse me. Mr. Atkins and Mr. Tuttle, when they talked privately together.

A. Well, I don't know if I had any duties to perform at that time or not. But I most likely felt that it wasn't any of my business.

Q. I see.

A. So I made myself scarce.

Q. Then, on the 8th, on or about the first week in March or the middle of March, that is the only other time that you saw Mr. Tuttle, is that correct?

Mr. Yeates: Is that up to that time, you are saying?

Mr. Smith: Up to that time.

Q. (By Mr. Smith): Did you see Mr. Tuttle after you first met him?

A. Yes. Yes. He came back to the warehouse there on one occasion.

Q. On one occasion? A. Yes, sir.

Q. But you didn't talk to him on that occasion?

A. Oh, I might have conversed with him just a short while.

Q. To say hello or something of that nature?

A. Yes.

Q. I see. Other than that, other than the first time, then, [110] you never talked with Mr. At-

(Testimony of Leon Maples.) kins or with Mr. Sharp regarding Mr. Tuttle? Or

did you?

The Witness: Well, reword your question, please.

Mr. Smith: I will ask the reporter to read it back.

(Last question read.)

- A. I don't remember talking with Mr. Sharp about Mr. Tuttle at all. I remember, after Mr. Myers had come to work, that I talked to John—Mr. Atkins—and told him that I wished we had been able to get Tuttle rather than this Myers.
 - Q. You didn't like Myers?
- A. I didn't like—well, yes, that is the statement, yes.
- Q. But you didn't know Tuttle really? You didn't know whether—
 - A. No, sir. I had no idea about him.
 - Q. What did you have against Mr. Myers?
- A. This was nothing personal at all. He just, he was not interested in his work, he preferred to goof off rather than do the work that was left out for him at night, which would result in my doing it the next day.
- Q. In other words, you were working different shifts?
- A. No, sir. He was working the swing shift, I was working the daylight shift, and I would leave work for him to do that afternoon and that night, and the next morning I would have to come back and do it by myself, do it myself.

- Q. It wasn't a matter of personal clashes between you? [111]
 - A. No, sir. Not at all.
- Q. You stated that you talked with Mr. Fudge about Mr. Tuttle. A. Yes, sir.
- Q. And just to refresh my memory, would you tell me again what you said to Mr. Fudge and what Mr. Fudge said to you?
- A. Well, I just asked Mr. Fudge why we got—why Mr. Tuttle wasn't sent up, and he said, in a joking manner he said, "Well, this fellow is too young to tell me how to run my union." And that's all.
- Q. You never asked Mr. Atkins if he had a job for Mr. Tuttle, did you? A. No, sir. No, sir.
- Q. Did you personally know of any warehouse openings that were available for Mr. Tuttle?
 - A. I knew there was a warehouse opening.
 - Q. When?
 - A. When Jack Sharp was transferred.
 - Q. When was he transferred?
 - A. Around the 1st of March.
 - Q. Around the 1st of March?
 - A. Yes, sir.
 - Q. Was a man hired to replace Mr. Sharp?
 - A. Pardon?
 - Q. Was a man hired to fill Mr. Sharp's place?
 - A. Somebody had to be hired to replace him.
- Q. Didn't you have enough men on duty at that time to fill all three shifts?
 - A. Not until this Myers was hired.

Q. When was he hired?

A. Around the 1st of March.

Q. To your understanding, did Mr. Myers come to work before Mr. Sharp left?

A. I don't remember. It was either - no, he

didn't. Or did he? No, sir.

Q. Then, since this first day that you met Mr. Tuttle you did not again see Mr. Tuttle up at the Black Rock warehouse, is that correct?

A. I beg your pardon?

- Q. After the first day that you met Mr. Tuttle on Monday, the 25th of February, you did not then again see Mr. Tuttle up at Black Rock, is that correct?
- A. I stated awhile ago that Mr. Tuttle came up there.

Q. Did you see him? A. Yes.

Q. When?

A. It was around the 15th of March.

Q. About what time?

A. I would have to guess, but I would say it was in the afternoon, around 1 or 2 o'clock. [113]

Q. What were you doing in the warehouse at that time?

A. I was working the day shift at that time.

Q. The day shift? A. Yes.

Q. Mr. Sharp was working the day shift?

A. Mr. Sharp had been transferred to Wishon.

Q. Already?

A. When Myers came, or a day or two before Myers came, Mr. Sharp was transferred to Wishon.

That was around the 1st of March. Myers came to work in that vicinity there.

Q. You hadn't advised Mr. Tuttle in the meantime that there might be a job available up there when you terminated to get married, had you?

A. Oh, I don't know. I think it was common knowledge that I was quitting then.

Q. Had you mentioned to Mr. Tuttle that there may be an opening when you quit?

A. I couldn't answer that. I don't know.

Q. Did you write a note on an envelope and send it down to him?

A. You know, I was thinking about that awhile ago. That sounds familiar, but I can't remember it. If I could see the envelope, I could tell if it was my writing.

Q. You could have put it on there, thinking that he could come up there and talk to Atkins again, is that right, about a job? [114]

A. I very likely may have.

Q. Did you recommend to Mr. Atkins that Mr. Tuttle be hired?

A. I didn't know Mr. Tuttle. I couldn't recommend him.

Q. Then, when Mr. Tuttle got up there sometime around the first week of March, he spoke to you and then went to see Mr. Atkins, is that correct?

A. I imagine that is about it, yes.

Q. You didn't overhear any of that conversation?

- A. Well, now, yes, I did. I was in the office at the time, and that is the conversation where Mr. Atkins told Tuttle that he had put in a requisition for him by name at the time that Jack was leaving and before this Myers came up there.
 - Q. Did Mr. Tuttle tell Mr. Atkins that he had had trouble with the union?
 - A. I believe so, yes. I believe so.
 - Q. What did Mr. Atkins say to any remark like that? Do you recall?
 - A. Well, if there was any remark, it was an unimportant one. I mean I can't remember it, but I am sure that John either changed the subject or dismissed it.
 - Q. In your conversation with Mr. Fudge, that was purely for a personal interest, is that right?
 - A. Well, I don't know how to answer that.
 - Q. Well, let me put it this way: Mr. Fudge, according to [115] your testimony, implied that it was not really much of your business, isn't that right?

 A. More or less, yes.

Q. Why did you consider it your business?

- A. Well, look. He was my business agent and I felt like I ought to carry on a conversation with him, and I guess I am kind of popular for opening my mouth at the wrong time, and that was one of those times. And just as soon as Mr. Fudge said what he did, well, I figured well, now is a good time for me to shut up. I mean, it was a little late, but I did shut up then.
 - Q. Well, you admit that you were not repre-

senting Kings River Constructors or any job management in asking Mr. Fudge anything about Mr. Tuttle, is that correct?

A. Very much so.

Mr. Smith: I have nothing further.

Trial Examiner: You have testified that you overheard Mr. Atkins say to Mr. Tuttle that he had made a requisition for him?

The Witness: Yes, sir.

Trial Examiner: That he had sent in his name? The Witness: Yes, sir.

Trial Examiner: Did he state to whom he had made the requisition, to whom he had sent the name? Did he mention "union," himself? [116]

The Witness: No, sir. He never mentioned the word "union" to my knowledge, to my memory. He said, "I made a requisition for you by name." But I don't recall him saying that he made the requisition to the union at all. And I am inclined to say that he didn't say that.

Redirect Examination

- Q. (By Mr. Yeates): Did he identify any names other than—
- A. Well, it is—Mr. Atkins did have a phone in the warehouse with which to call to town, and it wasn't possible for him to call——
- Q. Well, I know. The question I asked you is this: At the time he mentioned, in conversation you overheard, when he was mentioning to Mr. Tuttle a requisition by name, I believe your state-

(Testimony of Leon Maples.) ment was that he wasn't available, did he make any statement of any names, name any names other

than Mr. Tuttle's name?

A. He said, "I put in a requisition for you by name and Mr. Wolcott said you weren't available"—I think that's right.

Q. Were there any other names mentioned?

A. Not that I remember.

Mr. Yeates: Nothing further.

Recross Examination

Q. (By Mr. Smith): You are not firmly sure of any of the content of these conversations, are

you?

A. This has been a year and, at best, I don't have a good memory. [117] And this was all at the time just trivial conversation that I would forget tomorrow. So I couldn't be sure of what exactly was said at all. But, to the best of my knowledge and memory, what I have told you is true.

Q. You are familiar with your hiring procedure

at Black Rock, aren't you, somewhat?

A. No, I wouldn't say I am.

Mr. Smith: That is all.

Further Redirect Examination

Q. (By Mr. Yeates): Do you recall whether or not there were any conversations between Mr. Tuttle and Mr. Atkins concerning Mr. Tuttle's trouble with Mr. Fudge?

A. Well, I don't know if I overheard the con-

versation or if Mr. Atkins told me about it or if Tuttle told me and then I told Atkins, but we got in on the, we were more or less informed that he had had a disagreement with Mr. Fudge.

Q. Do you know whether that was said by Mr. Tuttle to Mr. Atkins or by Mr. Atkins to you? Do you know?

A. I am sort of inclined to think that Mr. Tuttle told me——

Q. I don't want what you are inclined to think. Do you know?

A. Well, I don't know.

Mr. Yeates: Nothing further.

Trial Examiner: You are excused, sir.

(Witness excused.) [118]

Trial Examiner: We will take a 10-minute recess. (Short recess.)

Trial Examiner: Are you ready to proceed?

Mr. Yeates: General Counsel is ready.

Mr. Smith: Respondent is ready.

Mr. Yeates: At this time General Counsel rests.

Trial Examiner: What is the Respondent's pleasure?

Mr. Smith: At this time Respondent wishes to make the usual motion that the complaint be dismissed.

Trial Examiner: I think I would not want to grant your motion without having studied the transcript, what has been said thus far. Do you want to argue the motion? Is it your contention here

that the General Counsel has not made a prima facie case?

Mr. Smith: It is our contention that the only evidence in the record that Mr. Tuttle was denied employment by Kings River Constructors because the union refused to clear Mr. Tuttle is some testimony to the effect that Mr. Bert Perkins, project manager of Morrison, Walsh and Perini, a neighboring contractor, suggested to Mr. Tuttle that he apply at Black Rock warehouse for employment and that he clear with the union. At no point has the General Counsel established that the union did, in fact, refuse to clear Mr. Tuttle and, as a matter of fact, at no point has it been established that Kings River Constructors had requested the union to clear Mr. Tuttle. [119] Nor has it been established that there was, in fact, an opening in the warehouse for which a warehouseman was needed. It is the contention of the Respondent that at no time did it offer a position to Mr. Tuttle nor did it at any time have a position for which Mr. Tuttle could have been employed.

Trial Examiner: Do you want to be heard, Mr. Yeates? I take it, first, you would have to present proof that there was a job opening to which Mr. Tuttle would have been appointed, except that the union refused him clearance; you would have to prove that to have a case, wouldn't you?

Mr. Yeates: Well, General Counsel doesn't say that they absolutely have to show that there was a job opened. If employer's requirement of clearance by the union would have necessitated him getting the clearance, then, under your Swinnerton-Walburg and your Utah Construction theories, which are still observed by the Board, there is where your discrimination starts.

Trial Examiner: Well, do you mean—yes, I recall the Swinnerton-Walburg case—you mean the applicant goes to the company and the company says, "You can only be employed if you get cleared through the union"?

Mr. Yeates: If they require the clearance as a condition of employment.

Trial Examiner: You would have to show nothing further under Swinnerton-Walburg?

Mr. Yeates: That is right. [120]

Trial Examiner: I think that is correct. Whose testimony do you claim established that fact?

Mr. Yeates: I claim that Mr. Perkins' testimony, inasmuch as there had been—

Mr. Smith: Mr. Perkins has not testified.

Mr. Yeates: I meant, rather, the testimony of Mr. Sharp and Mr. Tuttle's statements by Mr. Perkins and the statements made by Mr. Atkins to them showed that the clearance was a condition for employment.

Trial Examiner: Well, I think Mr. Tuttle testified to the fact that Mr. Perkins said that he should clear with the union.

Mr. Yeates: That is right.

Trial Examiner: I don't know that he testified that Mr. Perkins says you can only be employed if you clear through the union, Mr. Yeates. If I credit Mr. Tuttle's testimony in toto, there is some

testimony to the effect that Mr. Perkins did certainly suggest—

Mr. Yeates: He said, "Go get cleared with the union and then report to work."

Trial Examiner: Something to that effect. I believe the company claims that Mr. Perkins was not at that time acting in a representative capacity. What would you have to say to that?

Mr. Yeates: Well, Mr. Perkins has identified himself [121] with the work up there, on the transfer of Sharp. But the main position is the statement of Mr. Atkins that he requisitioned this employee and because of the failure of Mr. Fudge to clear him he could not work at that project.

Trial Examiner: Who testified to that?

Mr. Yeates: Mr. Tuttle. And Mr. Maples testified to it, in part.

Trial Examiner: Well, you remember, I asked the last witness some pretty pointed questions on that requisition statement of Atkins and all he could come up with there was that the name mentioned was Wolcott. But I don't think he contributed a great deal to the General Counsel's case on that point. I am not too clear on what Mr. Tuttle testified to on that point. But possibly Mr. Tuttle's testimony credited with respect to Atkins' statement may be sufficient from your point of view.

Mr. Yeates: Yes.

Trial Examiner: Well, I just have to read the transcript. I can't grant your motion at this time. I can reserve ruling, now, for purposes of going

ahead, the same as if I denied it at this time, without prejudice of course.

Mr. Smith: I would like to make one more cross-argument here. We feel that to have the application of the law of the cases cited by counsel for the General Counsel, it would have to be established that it was the general or usual practice [122] for the employer to demand clearance from the union prior to employment of an individual and that in the event clearance was refused the individual would not be employed.

Trial Examiner: That was pretty well established in Swinnerton-Walburg. I recall the case because I heard the case. That is my recollection of what was established in that case.

Mr. Smith: The fact in this case, which I think the General Counsel is aware of through their investigation, is that the union did not at any time refuse to clear Mr. Tuttle, because the union, in accordance with the well accepted and established practice of the company, was not requested to clear Mr. Tuttle.

Trial Examiner: You mean was not requested by the company to clear Mr. Tuttle?

Mr. Smith: By the company or any authorized representative of the company through which the union knew that they were to deal. I think that General Counsel has the unsupported statement of opinion of the charging party as to why he did not get a job at the Black Rock project shortly after he applied for the same with Mr. Perkins

and with Mr. Atkins. But I might point out that there has been nothing to show here and, as a matter of fact, the facts will prove to the contrary, that Mr. Tuttle would even have knowledge of the hiring process in that respect and would even know whether or not the company had requested them until the company told Mr. Tuttle [123] that they had hired him for that position and that they had requested his clearance by the union, if in fact the company would even request clearance in his case.

Mr. Yeates: The testimony, I believe, will show that Mr. Tuttle gave the statement given to him by Mr. Atkins, the immediate supervisor, that he had requested, or requisitioned, him by name and that Mr. Fudge had said that he was not available. Now, that is the statement that Mr. Tuttle states was made to him. And, in addition to your statement, you have a series of things here you have to consider, and I don't know if it should be argued here or later, but the fact that there were people coming and going from this warehouse and that they were made known of Mr. Tuttle's availability and that he was there and that at the time he was called up or somebody had given him the message to go to the Black Rock project, there was going to be an opening in the work there—there was one case, Sharp was being transferred; in another case, Myers left—and on these types of things, where you have these arrangements, you don't get it printed out. There are a lot of these things you read from just the way that the facts fall into line rather than from a guided path with pointers.

Trial Examiner: Of course, the Trial Examiner likes to have as many pointers as possible.

Mr. Yeates: Well, General Counsel likes to have pointers, too. [124]

Mr. Smith: I submit that the counsel for General Counsel has not established by any testimony any arrangement or usual practice. He has confined his case strictly to Mr. M. E. Tuttle and to the one statement of Mr. John Atkins, the warehouse supervisor. Admitting, or assuming for the purposes of this motion only, this argument that Mr. Atkins had, in fact, made that statement, I submit that the statement, itself, does not constitute an unfair labor practice under the Act, in that Mr. Atkins' statement, as set forth by counsel in his argument is to the effect that Mr. Tuttle—he had talked with Mr. Fudge, he had requisitioned Mr. Tuttle by name. He does not say to whom he directed a requisition nor does he say that a requisition was ultimately directed to the union.

Mr. Yeates: Are you saying as to Mr. Maples or as to Mr. Tuttle?

Mr. Smith: As to Mr. Tuttle's statement that you just described. And there is a vital link missing, you see, that when Mr. Fudge replied that he was not available for work, it does not say that Mr. Fudge refused to clear Mr. Tuttle upon the request of Kings River Constructors. And that must be the basis of any unfair labor practice charges.

Trial Examiner: Well, I will just have to read the testimony. I at this time am by no means cer-

tain essentially what Mr. Tuttle's testimony was on that point. Besides, you have the matter of credibility. [125]

Did you want to present a witness? Did you want to proceed now or did you want to have a recess?

Mr. Smith: I think we are ready to proceed.

Trial Examiner: Very well.

Mr. Smith: I would like to call Mr. Bert Perkins.

BERTRAM LUCIAN PERKINS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

- Q. (By Mr. Smith): Will you state your full name? A. Bertram Lucian Perkins.
 - Q. And your address?
 - A. 4846 Libbit, Encino, California.
- Q. During the period February 1 to April 15, 1957, what was your occupation?
- A. I was project manager for Morrison, Walsh & Perini on the Wishon Dam.
- Q. As project manager for Morrison, Walsh & Perini on the Wishon Dam, did you have any authority or any connection with any other construction projects in the area?
 - A. None whatsoever.
- Q. Do you know the charging party in this case, Mr. M. E. Tuttle? A. Yes, I do.
 - Q. When did you first meet Mr. Tuttle? [126]
 - A. Beardsley Dam.

- Q. I believe you were present this morning when Mr. Tuttle testified, and that is the same Beardsley Dam on which he was employed?
 - A. That is correct.
 - Q. By Tri-Dam Constructors?
 - A. That is right.
- Q. What was your position with Tri-Dam Constructors? A. General superintendent.
 - Q. Who did you work for?
 - A. I worked for Tri-Dam Constructors.
 - Q. Who was your immediate superior?
- A. My immediate superior was O. H. Tucker, who was the project manager.
- Q. Did you have any basis on which to judge Mr. Tuttle's work abilities?
- A. Yes. He didn't work directly for me. He worked indirectly. But I observed his activities.
 - Q. When did you leave Tri-Dam Constructors?
 - A. About a year ago in September.
 - Q. That would be September of 1956?
 - A. '56, yes.
 - Q. And where did you go at that time?
- A. I went to Wishon Dam, Morrison, Walsh & Perini.
 - Q. You were project manager? [127]
 - A. I went in there as general superintendent.
 - Q. When did you become project manager?
 - A. Project manager in November.
 - Q. 1956? A. Of the same year.
 - Q. 1956? A. Yes.

- Q. Do you recall meeting Mr. Tuttle in Fresno, California? A. Yes, I do.
- Q. Will you state where and when this meeting occurred?
- A. Yes. It was in the Fresno Hotel Coffee Shop. He came in with Jack Sharp and——
 - Q. And were there other persons with him?
- A. Yes. I believe Ward was there, and Billings, and that is all I remember at the moment.
- Q. Do you recall the purpose of Mr. Sharp's and Mr. Tuttle's visit to you at the coffee shop?
- A. Yes. Sharp knew that he was going to be released from that job eventually to go back to work for me up on the canyon and the time was getting when we were about to open up Wishon Dam, and he came down to see if I had obtained a clearance from Jack DeLay who would have to release him in order for me to hire him.
 - Q. Who is Mr. DeLay?
 - A. Project manager for Kings River Constructors. [128]
 - Q. And Mr. DeLay, as such, was Mr. Sharp's employer at that time? A. That is right.
 - Q. What promises, if any, had you made to Mr. Sharp concerning employment at Wishon Dam?
 - A. I told Mr. Sharp if Jack DeLay would release him there I would put him to work at Wishon Dam.
 - Q. When did you tell Mr. Sharp this?
 - A. I can't say.
 - Q. Had you spoken to Mr. DeLay prior to your

(Testimony of Bertram Lucian Perkins.)
meeting with Mr. Sharp? A. Oh, yes.

- Q. You came to speak to Mr. DeLay about Mr. Sharp?
- A. Yes, I had to talk him into turning him loose, or I could not have gotten him.
- Q. Had you spoken to Mr. Atkins about Mr. Sharp being released to work at Wishon?
- A. To the best of my knowledge, I didn't. Now, I may have because, I mean, that wouldn't be normal procedure, I mean I would go to the project manager, who, in turn, would take care of that.
 - Q. You did not-
 - A. But I may have. I wouldn't say.
- Q. Do you remember, do you recall the statement of Mr. Sharp that you had visited John Atkins on Friday, the day before [129] your meeting with Mr. Sharp and Mr. Tuttle at the Fresno Hotel to discuss Mr. Sharp's release?
- A. No. That isn't why I was there. I was down there occasionally because my boss and Jack's boss, the district manager, used to fly into Wishon and then we went down over on the other projects, he went over to my projects there, and when he covered the other projects he would ride with me, I would be his chauffeur. So I was down there occasionally.
 - Q. Who is your boss? A. Jim Wells.
 - Q. The district manager?
 - A. Of Morrison-Knudsen Company.
- Q. What interest did Morrison-Knudsen have in your job and Mr. DeLay's job?

Morrison-Knudsen Company were the sponsoring partner.

Were the sponsoring partner of what?

A. Of Morrison - Walsh - Perini joint venture. And they also were of the Kings River Constructors.

But were these joint ventures of the same Q.

companies or were they different groups?

A. No; they were different companies. They were separate entities completely, different partners and different jobs completely.

Q. So between you and Mr. DeLay there was no connection except that you worked for a-

A. Parallel job, I mean. He ran one job and I ran another.

Q. Would you relate what was said at this meeting held in the Fresno Hotel coffee shop the

morning of Saturday, February 23rd?

A. Jack Sharp was trying to promote Tuttle for the job that he would be vacating. I told him at that time that I had succeeded in getting Jack DeLay to release him so that he would be terminated there and be available for hire by me. I also told him that he could pick up his union referral, and there was not anything contingent, as to his employment, on that-I mean it's just procedure.

Q. Sharp's or Tuttle's employment?

A. Sharp's. That he go pick up his referral from the union and be there at whatever time he would be released.

Mr. Yeates: Is that what you told him?

I am going to limit this witness to the answer.

Mr. Yeates: Is this what you told him?

The Witness: Yes.

Mr. Yeates: All of these remarks that you said it was not in any way contingent as to his employment——?

The Witness: No. I was just trying to clarify the point that I brought out there earlier.

Mr. Yeates: You were doing that on your own, you mean?

The Witness: Yes.

Mr. Yeates: Just so I understand it. [131]

Q. (By Mr. Smith): Trying to limit this conversation to what you said and what Mr. Sharp said and what Mr. Tuttle said on this occasion, will you please——

A. Well, I told him, Mr. Sharp, that I had obtained his release from Mr. DeLay and that as soon as he could replace him he would be available for termination there and for me to hire him. And I didn't give him an exact date because I didn't know the exact date, but it would be somewhere in the near future from there. He asked me about Tuttle, saying, "You know Tuttle," and "He could fill that job." And I don't know the exact words, but I told him something to the effect that I had nothing to do with that project, but we hired through Jim Wolcott and that he should see them.

Q. Did you tell him to see the union?

A. I probably did. I probably told him to see

(Testimony of Bertram Lucian Perkins.) the union, and I probably told him to see Jim Wolcott. That would be the normal procedure.

Q. You promised him a job at Kings River Con-

structors?

A. I didn't promise him any job.

Q. Did you have authority to promise him a job there?

A. I didn't have the authority to promise him

a job there.

Q. Were you hiring the warehousemen at Wishon at that time?

A. If we weren't at the time, it was very shortly right thereafter.

Q. Would you have authority to promise a man

a job at Wishon? A. Yes, I would.

Q. Did you promise Mr. Tuttle a job at Wishon?

A. I did not promise him a job at Wishon, no.

Q. If you were promising jobs for any employer, would you likely be promising them for Wishon?

A. That would be the only person that I could

promise a job with.

Q. Was that the only concern that you could promise a job with? A. Absolutely.

Q. If Mr. Tuttle had asked you for a position

at Wishon, would you have hired him?

Mr. Yeates: Wait a minute. I think we are getting pretty conjectural here.

Trial Examiner: I agree.

Mr. Yeates: I am going to object to that.

Trial Examiner: I don't think that would make

(Testimony of Bertram Lucian Perkins.) any particular difference, whether he would have had him at Wishon.

- Q. (By Mr. Smith): Did you see Mr. Tuttle after that date?
 - A. I can't say that I did or that I didn't.
- Q. You were sitting here in the room this morning, weren't you, Mr. Perkins, when Mr. Tuttle testified that you met him at the door of the Morrison-Walsh-Perini office and took him into Mr. Wolcott's office? [133]
 - A. Yes, I was.
 - Q. Do you recall that? A. No.
 - Q. You don't recall that you did that?
- A. No. It is perfectly possible that I did, because that is where the people fill out applications for jobs. But I never mentioned Mr. Tuttle to Mr. Wolcott, never took him in.

Mr. Smith: That is all.

Cross Examination

- Q. (By Mr. Yeates): The Morrison-Knudsen Company is the sponsoring company for Morrison-Walsh-Perini, is that right?
 - A. Morrison-Walsh-Perini, that is correct.
 - Q. And also for the Kings River Constructors?
 - A. Yes, they are.
- Q. By "sponsoring," you mean the one who takes charge of doing the work?
- A. Not exactly. The projects are autonomous. However, if you have a problem that goes beyond what you can handle in the field, as project man-

(Testimony of Bertram Lucian Perkins.) ager on a project, you have to have somebody to go to, and of course you can't go to all three or four or five sponsors, I mean companies, so they designate one of the companies in the partnership to take your higher-level problems to.

Q. That Morrison-Knudsen traditionally does that type of thing in this work, they take the

sponsoring— [134]

A. Not necessarily, no. Some they take and some they don't. They just sort of split it up.

Q. In the case of Kings River and this case, the other one you referred to for Wishon, it was a case of Morrison doing it for both?

A. That is right.

Q. Mr. Wolcott, who was labor coordinator, was working on both projects?

A. That is right. Mr. Wolcott was labor coordinator for everything in Kings River Canyon.

Q. And that would include Wishon and Black Rock? A. That is right.

Q. How long have you been employed by Morrison-Knudsen? A. Eleven years.

Q. What is your present position and by whom

are you employed?

A. I am employed by Morrison-Knudsen & Company. I am district superintendent, from Los Angeles.

Q. The other project manager was Mr. De-

laney? A. Mr. DeLay.

Q. Mr. DeLay? A. Right.

Q. On your arrangement before Sharp went to

Wishon, had you talked that over before with Mr. DeLay?

A. Oh, yes.

- Q. And he wanted a warehouseman, is that the reason? [135]
- A. No. No. He said that he would release him. Of course, he wouldn't release him until we got
- Q. (Interrupting): No; this was before, when he was at Wishon?

 A. Yes.
- Q. I understand, Mr. Sharp was at Wishon first? A. Yes.
 - Q. And then went to Black Rock. A. Yes.
- Q. Was that by an arrangement between you and DeLay? A. That is correct.
- Q. And then when Wishon felt they had a need for him, you went to Mr. DeLay to release him to send him over to you?

 A. Right.
 - Q. Was this done through Mr. Wolcott?
 - A. Oh, yes.
 - Q. From both of you? A. Right.
- Q. Do you recall an interview by a representative of the National Labor Relations Board investigating this case?
- A. Yes; a Mr. Schneider called me up there on the phone.
 - Q. Did he see you in person or by telephone?
 - A. By telephone.
- Q. And at that time did you make a statement to him regarding this matter over the telephone?
 - A. We discussed it, yes.
 - Q. Was there any mention made to you at that

(Testimony of Bertram Lucian Perkins.) time regarding Mr. Tuttle's seeking the job at Black Rock project? A. Yes.

Q. As I understand, you did not sign any state-

ment in this regard? A. No.

Q. At this time did you, in conversation you had with Mr. Schneider, ever make a statement to Mr. Schneider, in reply to Sharp's mention of Tuttle being available for the job: "I informed Mr. Tuttle the job was open but that he would have to clear with the Teamsters Union at Fresno with respect to it"?

A. That is incorrectly stated.

Q. That is not the statement you made at that time? A. No, sir.

Q. What is the statement you made at that time?

- A. The statement I made at that time was that I told him, I undoubtedly did say the job was open—I mean, it was rather obvious to me that it was—at the same time, it could have been filled by him, too, I don't know, but what I told him was that I didn't do the hiring for the job, that I didn't have anything to do with the job personally, but that the two things that I recommended that he do, one was to see Wolcott to get, make an application; and the other thing, [137] very often we ask, we call a union for men when we need men, and I suggested that he get his card in there where he would be on their list.
 - Q. But at this time you state you never did say to him that he would have to clear with the Teamsters Union at Fresno with respect to it?

A. I did not say that he would have to do anything, no.

Q. And you are positive now that you never made that statement to the examiner?

A. Yes, to the best of my memory.

Q. Well, this statement was made—do you recall the date that this statement was made?

A. No, I don't.

Q. Would it have been in May of 1957?

A. It could have been.

Q. That could have been the day?

A. It could have been.

Q. And the matter we are referring to happened around February of 1957, is that right, in connection with Mr. Tuttle? A. Yes.

Q. And the statement you gave, whether it was this or whatever you gave to Mr. Schneider, was closer reference to the date of this occurrence than now, is that right?

A. That is correct. [138]

Q. Now, after your conversation with Mr. Tuttle did you have conversation with Mr. Wolcott or with Mr. Atkins concerning your conversation with Mr. Tuttle?

A. No, I didn't. I never recommended him or mentioned him.

Q. Did you have any conversation prior to giving this statement with Mr. Wolcott about the statement you had given to the representative of the Board?

A. No.

Trial Examiner: Read that, Mr. Reporter. (Last question read.)

Mr. Yeates: Strike everything out on that one. Trial Examiner: Strike it.

Q. (By Mr. Yeates): Did you have any conversation with Mr. Wolcott or Mr. Smith, attorney for the company, concerning this matter of Tuttle prior to the date you gave this statement to Mr. Schneider?

Mr. Smith: I will object here on one little point, that it has not been established that Mr. Perkins gave a statement to Mr. Schneider. He had a telephone conversation with Mr. Schneider. Somehow that was reduced, or a statement evolved from it; I presume Mr. Schneider typed it up. I am not sure that Mr. Wolcott even saw the statement.

Trial Examiner: You object to the form of the question?

Mr. Smith: I certainly do.

Trial Examiner: Maybe you had better reframe it, since [139] it was a telephone conversation.

Mr. Yeates: All right, I will state it this way:

- Q. (By Mr. Yeates): From the date of the incident concerning yourself and Mr. Tuttle at Fresno to the time that you had the telephone conversation with Mr. Schneider concerning this matter had you discussed the incident with Mr. Smith or Mr. Wolcott for the company?
 - A. Not to my knowledge.
 - Q. You stated in your earlier testimony that you might have talked with Atkins about the transfer or the replacement of Sharp, who was going to Wishon. Could the statement that was made by Mr. Sharp have been correct?

A. I wouldn't say it could or couldn't. I had no dealings with Mr. Atkins at the time actually at all, except just as a point of information, if I did happen to mention it.

Q. But it could have taken place as he stated?

A. That is possible.

Mr. Yeates: That is all.

Mr. Smith: Nothing further.

Trial Examiner: You are excused, Mr. Perkins. Thank you.

(Witness excused.)

Mr. Smith: I would like to call John Atkins.

JOHN E. ATKINS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [140]

Direct Examination

Q. (By Mr. Smith): Will you state your full name? A. John E. Atkins.

Q. And your address?

A. Post Office Box O, North Fork, Madera County, California.

Q. Mr. Atkins, are you the same John Atkins who was a warehouse manager for Kings River Constructors' Black Rock project from February 1 through April 15?

A. I am.

Q. When were you employed in this position at Black Rock?

A. November of 1956.

Q. November of 1956?

- A. That could be October.
- Q. Mr. Atkins, are you acquainted with the charging party in this case, Mr. M. E. Tuttle?
 - A. I have met him twice.
- Q. When was the first time that you had occasion to meet Mr. Tuttle?
- A. When he came up to Black Rock seeking employment.
 - Q. When was that?
- A. Approximately February the 25th, I believe. It was on a Monday.
 - Q. Where did you see Mr. Tuttle?
 - A. I was in the office and——
 - Q. Warehouse office? [141]
- A. The warehouse office up at Black Rock—when Mr. Jack Sharp called me out and said that he had a party there that he would like for me to meet. And it was Mr. Tuttle.
- Q. And had Mr. Sharp mentioned Mr. Tuttle to you prior to the time you met Mr. Tuttle?
- A. About, oh, I would say four days before he had mentioned that Mr. Tuttle was available for work and that he was a good warehouseman and that he would like to have me put him on.
- Q. At that time did you have an opening in the warehouse?
- A. At the time that he suggested that there was an opening coming up, yes.
 - Q. There was an opening coming up?
 - A. Yes.
 - Q. At the time that you had this conversation,

or that you first met Mr. Tuttle, was there a warehouse opening?

- A. No. I understand that Mr. Sharp tried to contact Mr. Tuttle but there was a delay for some reason and by the time Mr. Tuttle arrived at the job the position had been filled. So there was no——
 - Q. On that Monday? A. That is right.
- Q. Now, were you aware at that time that Mr. Sharp intended to terminate at Black Rock and go to work for Morrison-Walsh-Perini?
- A. At that time I believe he informed me that at sometime [142] he would be asked to go back to Wishon.
- Q. Do you recall a visit from Mr. Bert Perkins on Friday or Saturday preceding this Monday in question, during which time Mr. Perkins informed you that the way had been cleared for Mr. Sharp to go to work for Morrison-Walsh-Perini?
 - A. No, I do not.
 - Q. You recall no such conversation?
 - A. No, I do not.
- Q. What were the circumstances of your first meeting with Mr. Tuttle?
- A. Well, I believe it was in response to my telling Jack to have Mr. Tuttle get in touch with me at the time that this opening, the first opening, appeared. But in the delay the position was filled because Mr. Tuttle did not arrive there in time for it.

Q. I believe you stated that you were in the warehouse office. A. That is right.

Q. Did Mr. Tuttle come in and introduce himself to you or what were the circumstances? Who was there?

A. I was in the office on the phone, I believe, either that or with some salesman, and was busy at the time, and Mr. Sharp came to the office door and informed me that he had a party out there that he would like me to meet.

Q. And then what did you do?

A. I went out after the telephone call and Mr. Sharp introduced [143] me to Mr. Tuttle.

Q. Would you recall the conversation that you had with Mr. Tuttle?

A. I believe I told Mr. Tuttle that right at that time there was no position open, the position had been filled because of the delay of him getting in there.

Q. Did you suggest to Mr. Tuttle that he leave his name and address or anything of that sort?

A. I don't believe I did, no.

Q. Do you recall any statement that Mr. Tuttle made at the time? A. No, I don't, at that time.

Q. Did you make any effort after that date to contact Mr. Tuttle?

A. Sometime after that, yes. There was to be a position open and——

Q. Did you make an effort to contact Mr. Tuttle personally?

A. Nothing; no, sir, I did not.

- Q. Did you contact him personally?
- A. No, sir.
- Q. When was the next time you saw Mr. Tuttle?
- A. He came up there the first week of March sometime.
 - Q. Did you ask Mr. Tuttle to come up?
 - A. No, I did not.
 - Q. And see you? [144] A. No, I did not.
- Q. Did you ask anybody to have Mr. Tuttle come up and see you? A. No, I didn't.
- Q. Can you tell us the circumstances of that meeting, where you were?
- A. I was in the warehouse. And Mr. Tuttle said that he was looking for work and I informed him that there were no positions open at that time, they had been filled.
- Q. In short, you more or less reiterated what you had said on the previous occasion, is that right?
 - A. That is right.
- Q. Did you make any statements or were any statements made concerning the union?
- A. Mr. Tuttle informed me that he was having trouble with the union.
- Q. Did he advise you what the nature of the trouble was?
- A. He didn't specify. He just said he was having trouble with the union.
- Q. Did you make any statement regarding the union? A. No, sir.
- Q. Did you make any statement regarding Mr. Tuttle's troubles? A. No, sir.

Q. Did you at any time offer Mr. Tuttle employment?

A. I couldn't. There was nothing open at the

time he [145] contacted me.

- Q. Did you at any time make a name requisition for Mr. Tuttle?
- A. I believe first time that I called I asked for Mr. Tuttle.
 - Q. Asked who?
- A. Asked Mr. DeLay—or Mr. Weatherman, our office manager.
- Q. Did you ever call Mr. Al Fudge of the Teamsters Union concerning Mr. Tuttle?
 - A. No, sir.
- Q. Have you ever had a conversation with Mr. Al Fudge concerning Mr. Tuttle?
 - A. I did not.
 - Q. You state you asked Mr. Weatherman.
 - A. That is right.
 - Q. For Mr. Tuttle? A. Yes, sir.
 - Q. When was this?
 - A. That was the, about the, 18th or 19th of February.

Q. Do you mean February or March?

- A. That would be February. That would be before the first time that he came in to see me on the 25th.
- Q. Before the first time that he came in to see you? A. That is right.
- Q. And at that time you were going to have an opening, is that correct? [146]

A. That is right.

Q. This was after Mr. Sharp talked with you about Mr. Tuttle? A. That is right.

Q. Had you known Mr. Tuttle or heard of Mr. Tuttle prior to Mr. Sharp's mentioning him to you?

A. The name was familiar. He had worked at Lomolo Falls in Oregon.

Q. I see.

A. And he had passed through Klamath Falls where I was stationed at that time. But to recognize the man, because we had hundreds go through there, I wouldn't know him, no.

Q. What was the reason for this job opening around the latter part of February? Do you recall?

A. That was, I had been informed that Mr. Sharp was being transferred, or not transferred, but they wanted him to go up to Wishon and he was going into the Operating Engineers.

Q. You state that you asked Mr. Weatherman to secure Mr. Tuttle for you. A. That is right.

Q. Did you fill out any form or anything of that nature? A. No. It was verbal.

Q. By the term "requisition," are you familiar with that term?

A. Well, yes.

Q. Do you use requisitions? [147]

A. No; not for requisitioning men, no.

Q. I see. But when you need a man for the warehouse, what is the process?

A. I would call Mr. Weatherman or contact him personally and tell him that I needed a man.

Q. You needed a man? A. That is right.

Q. And around the latter part of February you told Mr. Weatherman that you needed a man in the warehouse, is that correct, and asked for Mr. Tuttle by name?

A. That wasn't—well, the latter part of Febru-

ary, yes.

Q. The latter part of February?

A. Yes, sir.

- Q. What did Mr. Weatherman advise you?
- A. At that time he didn't advise me.
- Q. Were you under the impression that the process was started to secure Mr. Tuttle or some other man for this opening?

A. That is right.

Q. I see. Now, are you aware of what this process is in finding a man?

A. Well, my main responsibility would be to

ask Mr. Weatherman for help that I needed.

Q. I see.

A. And then he, in turn, I understand, would go through Mr. DeLay, the project manager. [148]

Q. And if Mr. DeLay said to hire a man, do you

know what would happen in that case?

A. Well, I imagine it would be referred to the labor coordinator, Mr. Wolcott.

Q. Do you have occasion to contact the union or to contact an individual directly in connection with employment? A. No, sir.

Q. At no time? A. The—

Q. Let me put it this way: If you had a good friend or a man who had worked for you for a

period of 10 years or more—for example, we will say, a man by the name of Mike Ryan—and with whom you were on very friendly terms, would you call Mr. Ryan directly or would you go through this same process to get Mr. Ryan as you would any other man?

A. I believe in the case of Mr. Ryan I contacted the district office, Mr. Mary Muller.

Q. You contacted them direct?

A. That is right. And I asked if Mr. Ryan was available, that I would like to procure him. And at that time I was informed that he was not available.

Q. I see. And then what was your procedure?

A. Then I put a request in for a man and about four hours later I received a call from Los Angeles, from Mr. Muller, that Mr. Ryan would be available. And I asked to have him come in. [149]

Mr. Yeates: Has this date been identified?

Mr. Smith: What?

Mr. Yeates: Has the date been identified on this?

Mr. Smith: No, the dates have not been identified.

Mr. Yeates: On this particular one?

Mr. Smith: I am seeking to establish this hiring procedure.

Q. (By Mr. Smith): When you found out Ryan was available did you call Mr. Ryan directly yourself?

A. No, sir.

Q. What did you do?

A. I informed Mr. Weatherman that Mr. Ryan

(Testimony of John E. Atkins.) was available and that I would like to have him because he had worked for me off and on for the last ten years.

Q. Did Mr. Ryan come to work for you?

A. Yes, he did.

Q. Did Mr. Wolcott bring him up?

A. No, sir.

Q. Did Mr. Ryan come in and sign up directly with you or did he sign up with some other department?

A. He would have to sign up with the office and come down with a clearance slip from the

office to me.

- Q. And that clearance slip from the office to you, did that authorize you then to—
 - A. To put him to work.
 - Q. To put him to work? [150]

A. Yes, sir.

- Q. Mr. Atkins, you stated, I believe, previously that you had called or had asked Mr. Weatherman to get you a warehouseman and had mentioned it to him that Mr. Tuttle was available.
 - A. That is right.
 - Q. As Mr. Sharp had told you several days prior to bringing Tuttle in? A. That is right.
- Q. Now, on the day that Tuttle came to see you, you said that the job had already been filled?

A. That is right.

- Q. When were you advised the job had been filled?
 - A. I believe on a Saturday evening Mr. Weath-

(Testimony of John E. Atkins.) erman had informed me that they had filled the position.

Q. And who did fill that position?

A. I believe that was Mr. Myers.

Q. Mr. Myers. You stated that—or it was stated while you were sitting in this room—that the next time you saw Mr. Tuttle was in March, the early part of March.

A. That is right.

Q. Can you recall the date?

A. Not exactly. It was the first week of March, I would think.

Q. And I believe you stated also you had no job opening at that time. [151]

A. That is right.

Q. When was the next warehouse opening, after March 8th? Do you recall?

A. I believe in April. I am not positive on that. Or the middle of March.

Q. Do you recall when Mike Ryan was hired?

A. Yes, sir.

Q. When was that?

A. I don't believe I could give you a specific date.

Q. Was the next job opening after the 8th of March, though, filled by Mr. Ryan?

A. Yes. That was the last job opening that we actually filled.

Q. Yes?

A. There was another opening to come up when Mr. Maples was to be married. And I put a call in for Mr. Tuttle at that time also.

Q. You put a call in for Mr. Tuttle at that time? A. That is right.

Q. Who did you call?

A. I called Mr. Weatherman and asked him to get Mr. Tuttle, that we had another opening coming up.

Q. The opening opened about—

A. Let me see.

Q. Excuse me. When did Mr. Maples, or when was it expected [152] that he would, leave?

A. Well, he said sometime the early part of April. I think it was the 12th or somewhere close to that.

Q. I see. And did you get ahold of Mr. Tuttle?

A. I did not directly, no, sir. I just put the call in to Mr. Weatherman and the procedure went on from there.

Q. What happened to that job opening?

A. Well, before Mr. Maples or at the time that Mr. Maples quit to get married Mr. Jim Wells, the district manager, appeared and informed me that they were shutting off both the graveyard and the swing shift and, therefore, there would be no opening for anyone.

Q. When the decision was made to reduce, to eliminate three shifts and go back to one shift—

is that correct?

A. That is correct, that is right.

Q. (Continuing) ——did that put you in the position of having to reduce forces at the warehouse? A. That is right.

Q. And did you reduce forces?

A. I did. I reduced—Mr. Maples quit on the 12th and on the 13th I terminated Mr. Weatherman.

Q. You terminated Mr. Weatherman?

A. Yes. That is the nephew of the office man.

Q. So instead of one job opening being available, as a matter of fact, two jobs went out of existence? [153]

A. Two terminations, yes, that is right.

Mr. Smith: Your witness.

Cross Examination

Q. (By Mr. Yeates): This District Manager Wells you speak of, is that for the Kings River Constructors?

A. That is right.

Q. Was that also for the Wishon project?

A. He has the authority over all of the projects in the southern California district.

Q. And Mr. Perkins would have worked under him, Mr. Wells?

A. On the Wishon project, yes, sir.

Q. And it was Mr. Wells who made the decision to terminate the shift on the Black Rock project?

A. That is right.

Q. You have worked with Morrison-Knudsen how long? A. Seventeen years.

Q. And at your present job, are you still under the employment of Morrison-Knudsen?

A. Under a joint venture, Macco-Morrison-Knudsen.

- Q. Is that the Kings River Constructors or is that a different one?
 - A. No, sir; that is a different one.
- Q. Is Morrison the sponsoring company in that one, Morrison-Knudsen?
 - A. No, sir; Macco. [154]
- Q. But you are still employed by Morrison-Knudsen there?
 - A. I am employed by the joint venture.
- Q. I see. Have you in the past been employed by the joint venture and then gone back to Morrison-Knudsen? A. That is right, sir.
- Q. And that was true of the Beardsley or whatever that project was, too?
 - A. I was not on that project.
- Q. Then, the Lomolo, the one where you were employed, Mr. Atkins, when you first knew Mr. Tuttle——
- A. As far as knowing Mr. Tuttle, the only time that I actually met Mr. Tuttle——
- Q. I was just giving you that to identify the job. A. At Lomolo?
 - Q. At Lomolo, in Oregon.
 - A. In Oregon, yes.
- Q. At that time you were employed by a joint venture?
- A. No. That was a straight Morrison-Knudsen job.
- Q. The supervisors, such as project managers, who have worked at these jobs on the joint ventures, are they very often the same in each of

the joint ventures as far as Morrison & Knudsen personnel go? A. No.

- Q. Have you worked with Mr. Perkins on any joint ventures before? [155]
 - A. No, I haven't.
 - Q. Have you with Mr. Wolcott?
 - A. No, sir.
 - Q. Have you with Mr. Wells?
 - A. Yes, sir.
- Q. You stated that you do not hire people directly.

 A. Not directly.
 - Q. You go through Mr. Weatherman?
 - A. I---
- Q. Who, in turn, goes through another gentleman, who in turn goes through another gentleman?
- A. Different projects are set up differently. Sometimes you are under the jurisdiction of the master mechanic when you are in the warehouse.
 - Q. The particular job at Kings River?
- A. Kings River, I was under Mr. Weatherman there, the office manager.
 - Q. So you would go through Mr. Weatherman?
 - A. That is right.
- Q. And Mr. Weatherman would go through someone else?

 A. Mr. Jack DeLay.
- Q. And Mr. DeLay would go through Mr. Wolcott?
 - A. In the case of hiring, I imagine so, yes, sir.
- Q. Now, that was true with respect to all people you hired at your Black Rock project? [156]
 - A. That is right.

Q. That was true of Mr. Maples?

A. Yes, sir.

Q. You did not hire Mr. Maples directly?

A. I couldn't hire him directly. It would have

to go through the office.

Q. Were you present in the courtroom earlier when Mr. Maples said that you hired him for the job?

A. Well, that is literally speaking. I recommended Mr. Weatherman to hire Mr. Maples.

Q. Did you interview Mr. Maples?

A. Yes.

Q. Who told Mr. Maples he was hired?

A. I imagine the office.

Q. You were not the one to tell him that he was hired? A. No, sir.

Q. On the matter of this procedure, is this procedure set up so that a clearance from the union can be obtained by the company?

A. It could be, you say?

Q. Yes, for employees for the job.

A. Would you rephrase that once more?

Q. Is this procedure set up on the hiring so that the employees can be cleared through the union?

A. Well, that would be through Mr. Wolcott.

I wouldn't know [157] the——

Q. Is it your understanding with respect to the employees hired for this project that they are cleared through the union before they are put to work?

- A. Well, I was under the impression—
- Q. That was your understanding?
- A. That was my impression.
- Q. Well, that was your understanding—

Trial Examiner: Did you get an answer to that?

Mr. Yeates: That was my question.

Q. (By Mr. Yeates, continuing): ——was that your understanding of the procedure followed at Kings River Constructors?

A. I stated that was my impression of what the procedure was. I went to Mr. Weatherman. He, in turn, went to Mr. DeLay, and from there on I understood that things went through Mr. Wolcott. He is the labor coordinator.

Q. And that Mr. Wolcott cleared the employees through the union?

Mr. Smith: I will object on the ground that I think the direct examination brought out, and was limited in that sense, that Mr. Atkins had no dealings directly with the union and didn't know and had no occasion to know it.

Trial Examiner: I believe all he is being asked for is what his understanding of the procedure was. And what weight that would have I don't know.

Mr. Yeates: May he answer the question?

Trial Examiner: Yes.

The Witness: Would you repeat it?

(Last two questions and intervening answer on previous page read.)

Mr. Yeates: May be answer the question? Trial Examiner: Yes.

The Witness: Would you repeat it?

(Last two questions and intervening answer

re-read.)

Trial Examiner: The question was: Was that your understanding, that Mr. Wolcott would clear through the union before hiring an employee?

A. I would have to say again, that was my im-

pression.

Q. (By Mr. Yeates): Were you interviewed by a field examiner for the National Labor Relations Board? A. Yes, sir.

Q. And at that interview—

Mr. Smith (interrupting): I am objecting to this because I don't think the direct examination covered these Board interviews, as such, and they are not even in the time that is in question.

Trial Examiner: I think on cross-examination, obviously, he is directing this question to the wit-

ness' credibility.

Mr. Smith: If this is to be impeachment, let's

get at it.

Trial Examiner: He hasn't stated his purpose, but I [159] haven't seen anything improper in his questions yet. He may be refreshing his recollection, for all I know.

So proceed, Mr. Yeates.

Q. (By Mr. Yeates): Did you have an interview with Mr. Schneider from the Labor Board on or about May of 1957?

A. I did.

Q. And where did that take place?

A. At Black Rock Camp.

- Q. And did you read this statement that you gave to Mr. Schneider?
 - A. I believe he read it to me.
 - Q. You signed the statement?
 - A. Yes, I did.
 - Q. Under oath? A. That is right.
- Q. Now, do you recall at that time whether or not you stated to Mr. Schneider this statement: "I know that F. Myers was cleared by the union, but it was a requirement between the company and the union that a man be cleared before he goes on the payroll. We cannot hire a man except that he goes through the union. And I was instructed to always contact Mr. Wolcott for any man I might need. Wolcott would take care of clearing the man through the union". Do you recall that statement?
 - A. I believe so.
- Q. Did you make that statement to Mr. Schneider at that time? [160]
 - A. I believe I did.
- Q. And at the time you made that statement, wasn't it your belief and did you not feel that this was a requirement and the procedure followed?
 - A. That was my impression at the time.
- Q. In this statement you don't say that is your impression is that correct? A. That is right.
- Q. You state: "But it is required between the company"—that they clear through the union. Now, at the time you gave that statement you didn't limit that to an impression. Isn't it true that this is the procedure that is followed?

A. I wouldn't know.

Q. This is the procedure that is followed with the men who have worked there as far as you know, is it not?

A. I wouldn't know. I wouldn't have the knowl-

edge there.

- Q. You gave this statement based on your experience working with Morrison-Knudsen and your experience with the company on this job, did you not?
- A. I gave the statement assuming that that was the procedure.
- Q. Because this is the procedure followed by the Kings River Constructors?
 - A. I wouldn't know that.
- Q. That is, you have worked with the Morrison-Knudsen Company on these types of jobs and that is the procedure followed [161] by them on the hiring of their employees?
 - A. I wouldn't know.
- Q. You discussed with Mr. Wolcott the fact that the men were cleared through the union?

Mr. Smith: I object to that. He has not testified to that.

Trial Examiner: Well, it is a question—

Mr. Yeates: I am asking a question.

Q. (By Mr. Yeates): Is that not correct?

A. I have discussed with Mr. Wolcott the hiring of men, if I needed them.

Trial Examiner: That does not answer the ques-

tion exactly.

Do you want to get your question answered, Mr. Yeates?

Mr. Yeates: The question I asked was:

- Q. (By Mr. Yeates): And, Mr. Atkins, this might not be the exact question because I can't remember—the procedure followed in this, to your understanding, it was followed in this way with respect to clearance for the employees?
 - A. I said I wouldn't know that.
- Q. But at the time you gave this statement that was your understanding.
 - A. That was my impression, yes.
- Q. Is it still your understanding that that was the procedure followed?

Trial Examiner: He has never testified as to his understanding, Mr. Yeates. He has held steadfastly to the word [162] "impression."

- Q. (By Mr. Yeates): Well, you state this as your impression? A. That is right.
- Q. And this impression was derived from instructions to you? A. No, sir.
- Q. Was it derived from your previous work there and the manner that was used?
 - A. Just general conversation on the job.
 - Q. Between you and Mr. Wolcott?
- A. No, sir. Between anyone that happened to come into the warehouse.
 - Q. You just generally discussed this with them?
- A. Not generally discussed, but if it was brought up.
 - Q. And from them you got the impression that

this was the manner followed. Who are these people you say generally you discussed this with?

A. Well, there was hundreds of men that worked on the job.

Q. They told you that they had to be cleared before they came?

A. Not that they had to, no.

Q. But that was the procedure followed?

A. I wouldn't say that it was the procedure that they told me was followed, no.

Q. Where did you get this impression from? You got it from talking with men who stated that they had followed, or this is [163] the way they had cleared through the union?

A. From talking with men, that they were union members.

Q. And your statement, "But it is a requirement between the company and the union," now, you got that from talking with the men who came to work, that the company required that?

A. Well, that was the impression I had from

these conversations.

Q. But you were never told by anyone from the company that that was a requirement?

A. No, sir.

Q. This impression came from the air that was present in these discussions with these other people?

A. That is right.

Q. Nothing had ever been told you in any way?

A. No, sir.

Q. What is your present position with Morrison-Knudsen? A. Warehouse manager.

Mr. Smith: I object on the basis of that he has testified to that, and it wasn't that; he isn't working for Morrison-Knudsen.

Mr. Yeates: He said he was working for Morrison—

The Witness: I am working for Macco-Morrison-Knudsen.

Mr. Yeates: If I understood his testimony, he said he was on the Morrison-Knudsen payroll.

The Witness: I am on the joint venture's payroll. [164]

- Q. (By Mr. Yeates): How long is this joint venture that you are on, whose payroll you are on, to last?

 A. I don't know.
- Q. At the end of its time will you be again on Morrison-Knudsen's payroll?
 - A. I would imagine. I would not be sure.
 - Q. What is your age? A. Sixty-four.
- Q. Does Morrison-Knudsen have a retirement policy? A. Yes, sir.
 - Q. For employees? A. Yes.
 - Q. At what age do they retire them?
 - A. At 68.
 - Q. At 68? A. Yes, sir.
- Q. As far as you know at this time, are you entitled to retirement?

Mr. Smith: We will—

Trial Examiner: Are you objecting?

Mr. Smith: Yes. We are not inquiring about

Morrison-Knudsen. We are talking about Kings River Constructors, aren't we?

Mr. Yeates: This joint venture is not a corporation. It is a joint venture, is it not? [165]

Mr. Smith: It is a separate entity.

Mr. Yeates: It is a corporate entity? Is it a joint venture or a corporate entity?

Mr. Smith: Off the record, please.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Yeates: Strike the last question. I will ask

the question this way:

Q. (By Mr. Yeates): In the event you should be entitled to retirement, to the best of your knowledge, what company is it that would pay your retirement?

A. I would imagine Morrison & Knudsen Com-

pany.

- Q. Do you know whether or not the retirement policy for Morrison-Knudsen would depend upon continued employment with them until your retirement age?
 - A. I believe it is, or in case of sickness.
- Q. The first time you asked for Tuttle by name was when you realized that Mr. Sharp was to be transferred to Wishon? A. Yes, sir.
- Q. And you at that time requested him by name to Mr. Weatherman?
- A. That is right. I believe that I asked Mr. Sharp to have Mr. Tuttle get in touch with me.

And then I told Mr. Weatherman that if Mr. Tuttle was available I would like to have him. [166]

Q. And that was late in February, if I recall?

A. That would be around, oh, the 19th or 20th, somewhere around in there.

Q. According to your understanding of procedures from that time on, why, Mr. Weatherman would request the project supervisor to get Mr. Tuttle? A. That is right.

Q. And then it would ultimately go through Mr.

Wolcott? A. I would imagine so.

Trial Examiner: Well, you have more than imagination on that, don't you, Mr. Atkins? You know that it would go through Mr. Wolcott, don't you?

The Witness: Yes; he is the labor coordinator.

Q. (By Mr. Yeates): And that is the procedure followed on employees coming in to your job?

A. That is right.

Q. On Mr. Myers, was the procedure followed with him?

A. Yes, sir.

Q. And was he cleared by the union prior to his coming to work for you?

A. I wouldn't know. That would have to come through Mr. Weatherman.

Q. I will again refer to your affidavit that you gave to Mr. Schneider. In that affidavit you state: "I know that Myers was cleared by the union." Now—— [167]

A. Well, from Mr. Myers' conversation—he said he had been cleared.

Q. Was this your impression or a statement that Mr. Myers gave to you?

A. Mr. Myers told me that he had been cleared through the union.

- Q. When Mr. Myers left, that was before the time that Mr. Maples was terminated?
 - A. That is right.
- Q. You again asked for another warehouseman to fill that position? A. That is right.
 - Q. And that was whom? A. Mr. Ryan.
 - Q. Did you request him by name?
 - A. I did.
 - Q. And to whom did you request him?
 - A. The first request had been put through the district office, to see if he was available.
 - Q. And that was in Los Angeles?
 - A. That is right.

Trial Examiner: This is Myers we are talking about now?

The Witness: No. This is Mr. Ryan.

Mr. Yeates: Ryan.

Trial Examiner: Did you request Myers? [168] The Witness: No, I did not request him. I just requested a man.

Trial Examiner: Well, you requested Mr. Tuttle, didn't you?

The Witness: At one time, yes, sir.

Trial Examiner: Well, at the time you got Myers you had requested Tuttle, is that right or not?

The Witness: No. Not at the time I got Mr. Myers.

Q. (By Mr. Yeates): Prior to the time you got Mr. Myers?

A. I had requested, along in February, February 19th or 20th, I had requested Mr. Tuttle.

Q. Was Mr. Ryan cleared through the union, too?

A. I would imagine, yes, I would imagine so.

Q. That would be your impression, or there again had you—

A. He has always carried a union card.

Q. But the clearance you were speaking of with Myers was through Local 431, is that correct, through Mr. Fudge?

A. The information from Mr. Myers was that he had been cleared through the union.

Q. Through Local 431?

A. I don't know the number.

Q. What was the union you were dealing with in that area?

A. Well, for warehousemen, the Teamsters Union.

Q. That was Mr. Fudge, Local 431?

A. That is right. [169]

Q. You heard the testimony of Mr. Sharp that Mr. Perkins had told you that you were to release Sharp, that he was going back to the Wishon job. Do you recall that conversation?

A. No, sir, I do not.

Q. That conversation never took place?

- A. Not that I can remember, no, sir.
- Q. Could it have taken place?
- A. I don't believe so.
- Q. Did Mr. Perkins ever come to the warehouse, the Black Rock project warehouse?
- A. He has been down in the district, but actually to come to the warehouse for something, no.
 - Q. He has never been there?
- A. I wouldn't say he has never been there. I think that he came through there and looked the warehouse over.
- Q. The determination to eliminate the shift was made when Mr. Wells came in as district manager?
 - A. That is right.
- Q. And that, as I recall, was about the same time that Maples left?
- A. That is right. The next day after Mr. Maples left.
- Q. Up until that time, as far as you knew, you were going to operate on the three shifts?
 - A. That is right. [170]

Mr. Yeates: That is all.

Trial Examiner: Mr. Atkins, who took Mr. Sharp's place?

The Witness: Mr. Sharp's place when he left? Trial Examiner: Yes.

The Witness: Mr. Maples stepped up and took his place.

Trial Examiner: Just when did Myers come into the picture? We have been over this, but I am still not too clear.

The Witness: Mr. Myers came in about the time that Mr. Sharp left.

Mr. Yeates: Mr. Maples took Mr. Sharp's place and Mr. Myers took the place that Mr. Maples had had?

The Witness: That is right. And Weatherman was on swing shift, or I mean graveyard.

Trial Examiner: I believe you testified that when Tuttle actually showed up for the job this first time the job had been filled?

The Witness: That is right, yes.

Trial Examiner: That was your testimony?

The Witness: That is right.

Trial Examiner: It had been filled by whom?

The Witness: Mr. Myers.

Trial Examiner: Had you made any request for Mr. Myers?

The Witness: Not by name, no, sir.

Trial Examiner: Well, had you made any——? The Witness: I had made a request for a ware-

houseman, yes.

Trial Examiner: Without naming anybody?

The Witness: At that time.

Trial Examiner: You hadn't named Tuttle at the time Myers was hired?

The Witness: This was in the first part, or the middle part, of February?

Trial Examiner: This is the first—

The Witness: The first contact, I had asked for Mr. Tuttle, had asked Mr. Sharp to contact Mr. Tuttle.

Trial Examiner: Had you sent Tuttle's name in? The Witness: Just to Mr. Weatherman.

Trial Examiner: Was this before Myers or after Myers had been hired?

The Witness: I believe that it was at the time. The office also knew that Mr. Sharp was leaving, and before Mr. Tuttle arrived at the job to see me, because I had asked Mr. Sharp to have him contact me, I had been informed that Mr. Myers was hired for the job.

Trial Examiner: You actually had nothing to do with Mr. Myers' hiring?

The Witness: No, sir.

Trial Examiner: Do you have anything further, Mr. Smith?

Mr. Smith: Yes, we do. [172]

Redirect Examination

- Q. (By Mr. Smith): How long have you been carrying a union card, Mr. Atkins?
 - A. I do not carry a union card.
 - Q. Have you ever been a member of the union?
 - A. No, sir.
- Q. When the investigator for the Board, Mr. Schneider, visited you and talked with you concerning Mr. Tuttle, did you dictate this statement?
- A., No. I was talking to him and he was writing it down.
- Q. I see. And you stated that you didn't read it over, you believed he read it to you?
 - A. He read it to me.

Q. Did you want to sign that statement? Did you voluntarily sign it?

A. I did not. I informed him, I — he said, "Would you swear to and sign this?" and I said, "I would rather not sign it." And he said, "Well, you are eventually going to have to sign one."

Q. He said that to you? A. Yes, sir.

Q. He said, "You are eventually going to have to sign"?

A. Words to that effect.

Q. Did he make you raise your hand and swear you to an oath?

A. I believe he did, yes, sir, after he had informed me that—— [173]

Q. Do you know what an affidavit is?

A. Well, an affidavit, my impression of it would be that it was the swearing to the truth of your impressions or your thoughts.

Q. I see. Did you make these statements there—I think you have testified that they are statements of impressions, not especially statements of fact?

A. That is right.

Q. Are you in any position to know the statement of fact on these various items?

A. No, sir, I have no contact—

Q. Have you ever entered into bargaining sessions with any union?

A. No, sir.

Q. Have you signed a union agreement on behalf of the Kings River Constructors?

A. No, sir.

Q. Or any other employer?

A. I would have no authority to do that.

- Q. Have you ever seen a union agreement?
- A. No, sir.
- Q. Do you know what requirements exist between the company and the union?
 - A. I do not.
- Q. You don't know what agreements exist between the company [174] and the union?
- A. No, sir. Nor between the company and the people they are working for.
- Q. · Do warehouse managers generally see such things? A. No, sir.
 - Q. Are you concerned with such things?
 - A. No, sir.

Mr. Smith: That is all.

Trial Examiner: Mr. Atkins, did you tell Mr. Tuttle he would have to clear with the union?

The Witness: No, sir.

Trial Examiner: Did you tell him anything like that, make any statement to him along that line?

The Witness: I don't believe I did, no, sir, because there was no position open at the time, at either time that he came in.

Trial Examiner: I meant either time.

The Witness: No. There was no position open either time he contacted me.

Trial Examiner: I think he has testified to the effect that the second time he met with you you made some statement to the effect that he would have to clear with the union or should clear with the union. Would you say you did or didn't?

The Witness: No, sir. I think that he informed

me then that he was having trouble with the union.

Trial Examiner: What did you say? That is what I am particularly interested in now.

Trial Examiner: I believe I informed him that I had no jurisdiction past putting in for his employment.

Trial Examiner: Do you have anything further, Mr. Yeates?

Recross Examination

- Q. (By Mr. Yeates): At the time you talked with Mr. Tuttle it was your impression that warehousemen had to clear through the union, though? And I am using your term, "impression."
 - A. That was my impression.
- Q. And if you would have made a statement to him in that regard, it would have been in line with your impression, as a requirement for clearance?
 - A. I don't think the occasion arose—

Mr. Smith: I object to that question. Counsel states if he would have. Conjecture.

Trial Examiner: I will sustain the objection.

- Q. (By Mr. Yeates): At the time you talked to Mr. Tuttle this was your impression of the procedure followed, which was stated in your affidavit that you gave to Mr. Schneider?
 - A. That would be my impression, yes.
- Q. And at the time you gave this statement, do you recall whether or not you were asked to initial each page?

 A. I could have been.
- Q. And to initial any corrections that appeared in the body [176] of the affidavit?

A. Just offhand, I couldn't say.

Q. If I were to show you the statement that you gave Mr. Schneider——

Mr. Smith (interrupting): Are you going to admit this in evidence now?

Mr. Yeates: If you want it in evidence, I will put it in evidence.

Mr. Smith: I don't want it in evidence.

Mr. Yeates: If you want, we will have it marked for identification and have it put in evidence. I am going to ask him a question——

Mr. Smith: All right.

Q. (By Mr. Yeates): Is this your initial appearing on the affidavit?

A. That is right.

Q. And on each page, at the bottom there, can you state whether or not that is your initial on the bottom of each page?

A. I believe it is.

Q. And that is your signature on the last page?

A. That is right.

Q. Have you ever taken an oath before, Mr. Atkins? A. Yes, sir.

Q. And you understand the nature of an oath?
A. I do.

Mr. Yeates: That is all.

Trial Examiner: Mr. Atkins, in the position you held at that time on this project, just exactly what was your authority with respect to hiring warehouse personnel?

The Witness: I put in a request to the office, because I was working under the office manager, for

(Testimony of John E. Atkins.) different men that I would like to have working for me in my warehouse.

Trial Examiner: You could do it, and was it your custom to do it?

The Witness: Yes, it was.

Trial Examiner: And what was your custom, to request a man to fill a job or to request John Doe, so to speak, to fill the job?

The Witness: Well, if I knew of some man that had worked for me, I most generally requested him by name if I possibly could, if he was available.

Trial Examiner: What was the practice with respect to your recommendations? In other words, were your recommendations normally honored or were they normally not honored?

The Witness: I would say it was about fifty-fifty.

Trial Examiner: You didn't have your way all the time?

The Witness: No, sir. After all, I have men above me yet.

Trial Examiner: Do you have anything further? Mr. Smith: I have one question.

Trial Examiner: I am not entirely certain that we have developed his capacity for knowledge with respect to these things as much as it should be. Whether you want to ask any more questions or not—

Mr. Smith: He doesn't know the whole hiring procedure.

Mr. Yeates: Would the Trial Examiner like me to go more into his supervisory status?

Trial Examiner: I think you have gone into supervisory, but actually what extent he comes into contact with actual hiring practices, it is possible that might be developed a little further. I don't know. Maybe you have done all you can on that.

Further Redirect Examination

- Q. (By Mr. Smith): Mr. Atkins, did you request Mr. Weatherman, the office manager, to employ Mr. C. L. Weatherman, the warehouseman?
 - A. No, sir, I did not.
- Q. As a matter of fact, did you want Mr. C. L. Weatherman on your job? A. I did not.
 - Q. You got him? A. That is right.

Further Recross Examination

Q. (By Mr. Yeates): Is he not a relative of one of your [179] supervisors?

A. He was a relative of the office manager.

Mr. Yeates: Enough said. We are talking about ordinary supervisory authority.

Trial Examiner: I think perhaps the matter has been gone into pretty thoroughly now, unless you have something further.

Is there anything further?

Mr. Smith: I think that is about it.

Trial Examiner: You are excused, Mr. Atkins. Thank you.

(Witness excused.)

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

We will recess until tomorrow morning at 10 o'clock.

(Whereupon, at 5:05 o'clock, p.m., Monday, February 24, 1958, the hearing in the above-entitled matter was recessed, to be reconvened tomorrow, Tuesday, February 25, 1958, at 10:00 o'clock, a.m.) [180]

Proceedings

Trial Examiner: We will be in order.

Mr. Smith: I would like to call Mr. James Wolcott.

JAMES THOMAS WOLCOTT

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

- Q. (By Mr. Smith): Would you state your name and address?
- A. James Thomas Wolcott, 208 Louisa, Boise, Idaho.
- Q. Will you give us your present occupation, Mr. Wolcott? A. Labor coordinator.
 - Q. For what employer?
 - A. Morrison-Knudsen Company.
- Q. Would you describe your past experience and educational background?
 - A. I graduated from high school in 1942. In

August 1942 I was hired by Morrison-Knudsen Company for the PNAB project at Red Hill in Honolulu, Hawaii. I worked over there for 14 months in various jobs as a laborer, crusher man, patch plant operator, mechanic and shift mechanic. I returned to Boise October 1943 and then after getting out of the service April '46 I went to work at the terminal ice plant in Nampa, Idaho, for Morrison-Knudsen, worked until September, at which time I quit—I worked there on that job as a carpenter helper — and then I quit in September and went to the College of Idaho, [184] graduated there with a BA degree in economics in August 1949. I worked all of these summers while I was at the College of Idaho, I worked for Morrison-Knudsen Company in the paving division as an oiler and crusher man. In September 1951 I enrolled at Stanford University Graduate School of Business, graduated from there with a master's degree in April 1951. I was then hired by Morrison-Knudsen Company in Boise as an accountant, later worked as special assistant to the controller analyst, was then hired as a labor coordinator for Morrison-Walsh-Perini in August 1955, and I have been in and out of Boise since then, and back here for Kings River Constructors and Morrison-Walsh-Perini in November 1956.

Q. During the time in question, of this case, from approximately January 1957 through April 1957, what position did you hold?

- A. I was labor coordinator for Kings River Constructors and Morrison-Walsh-Perini.
- Q. Did you in your educational experience major or put special emphasis on any particular field in business?
- A. My BA degree was in economics, but the subjects were, as much as I could get, at least, of labor relations. At Stanford they won't let you major in any one particular field as far as getting a degree in that field, but you do take elective courses, of which I selected primarily industrial relations, industrial management, personnel, related subjects.
- Q. In connection with your duties as labor coordinator for Kings River Constructors and Morrison-Walsh-Perini during the period January 1957 to April 1957, or during the whole, entire period you were employed in this position, which of those concerns or what concern were you on the payroll of?
 - A. Which assignment do you mean, now?
- Q. Well, I mean in this position as labor coordinator for Morrison-Walsh-Perini and Kings River Constructors, from which joint venture or which company did you receive your pay check?
- A. I was paid by Morrison-Walsh-Perini, on their paycheck.
 - Q. On their paycheck? A. Yes.
- Q. Did you receive—you received no paychecks from Kings River Constructors at that time?
 - A. No.
 - Q. Are you acquainted with the procedure for

(Testimony of James Thomas Wolcott.)
the payment of your services between the two joint
ventures?

- A. There was an invoicing Morrison-Walsh-Perini would invoice Kings River Constructors for a portion of my salary.
- Q. What were your duties in connection with your position as labor coordinator?
- A. Well, as the title implies, I would coordinate the work forces, the hiring, assist the job management in lining out their crews and men according to the classifications that they wanted when they wanted them and tried to select people, [186] specific people to fill specific jobs, interviewed job applicants, got their qualifications, background and so forth. I handled grievances, any grievances on the job, assisted job management in the settlement of any jurisdictional disputes, helped interpret labor agreements to employees and to job management, interviewed many of the new men on the job, as they came and left the job, and general labor relations.
- Q. Mr. Wolcott, would you describe the employment process of Kings River Constructors during this period?
- A. Well, we obtained men both locally and from all over the country. Some of these people we knew beforehand and made arrangements beforehand to be employed, in which case I may or may not have interviewed them before they went to work. I had an office in Fresno at 1825 Merced Street at which

I interviewed any job applicants, got their qualifications, and so forth.

On hiring a man, I dealt directly with project management. We worked out the needs together. I was responsible to project management. We worked out the needs and I procured the men for them.

- Q. Did you process for employment all applicants or all employees with Kings River Constructors?
- A. I referred them to the job. They would be interviewed by me and I referred them to the job. The hiring and the placing on the payroll was done there. Other men were obtained [187] through the various local unions as we needed them, depending upon the skills that were needed and the qualifications and the particular problem at the particular time.
- Q. If, for example, the project manager at Kings River Constructors had need of two warehousemen, five cat operators, would be advise you directly?

 A. He would.
 - Q. Or would—— A. He would advise me.
 - Q. And you would seek to fill those positions?
 - A. That is correct.
- Q. Would you on your own at any time refermen to the project if you personally knew of job openings or if you knew of no job openings?
- A. I certainly wouldn't send a man to the job if we had no job opening. If we had job openings, yes.

- Q. How would you be advised of job openings?
- A. By the project manager. He would phone me at Fresno. We kept an office at Fresno for the reason we were remote—I mean the job itself was remote, back in the mountains—and we had to have some central place where people could come and apply for jobs, and the labor relations.
 - Q. Just how remote was the job from Fresno?
 - A. Which job?
 - Q. Well, Kings River Constructors. [188]
- A. The power house job was approximately, oh, 60 miles northeast of Fresno, on the north fork of the Kings River. It's about a two-and-a-half hour drive from Fresno.
- Q. Why did you choose to have your employment office in Fresno?
- A. Well, it gave us more opportunity to interview and talk with people that wanted to apply for jobs. And also, of course, I had a large number of dealings with the various union representatives. Some of that was accomplished in Fresno, some of it on the job.
 - Q. Is Fresno the closest city of any size—?
 - A. Oh, yes.
 - Q. Or labor market? A. Yes, definitely.
- Q. Mr. Wolcott, in the course of your duties as labor coordinator did you become acquainted with or do you know Mr. M. E. Tuttle, the charging party?
 - A. Yes, I know Mr. Tuttle. I have met him.

- Q. Would you state when and under what circumstances you first met Mr. Tuttle?
- A. He came into my office on February 26th. But prior—
 - Q. In what year?
- A. 1957. Prior to that time my secretary had left a note saying that Mr. Tuttle had come into the office, had told her that Bert Perkins would tell me that Mr. Tuttle was to be [189] hired at the Haas power house.
 - Q. When prior to the 26th of February?
 - A. Day before, the 25th.
 - Q. Do you recall—
- A. She said that he had been in there the day before.
 - Q. Do you recall——
- A. I didn't talk to him the day before. I talked to him on the 26th.
 - Q. Do you recall which day that was?
 - A. I think that was on a Tuesday.
 - Q. That you talked to him?
 - A. Talked to Mr. Tuttle?
 - Q. Yes. A. Yes.
- Q. Would you describe that meeting and conversation with Mr. Tuttle and what took place?
- A. Mr. Tuttle came in and said that he had come from Tri-Dam, that he wanted to go to work, and that he wanted to go to work right now. I told Mr. Tuttle that I had no orders for men right then. He answered that by saying that, something to the effect that "Now, you know I am having

(Testimony of James Thomas Wolcott.) trouble with the union here." And I told him, I said, "Mr. Tuttle, that makes no difference to me. Any dealings between you and your union, if any, is just that. And if at such time we have a job for you, we will contact you about that job. I am not concerned [190] about any relationships you

Q. Did you have a job opening in the warehouse at that time?

A. No, I didn't.

may have outside. My job is to get qualified men."

- Q. Would you have known if there was a job opening in the warehouse?
- A. I would have been contacted by project management if there was a job opening.
- Q. Did you have other people come in and see you, claiming that they had been promised employment?
- A. Yes. It was very common. I have had people referred to me by, or claim that they were referred to me by, various executives of the company. I have had people tell me that I had better hire them or they would contact certain representatives of the company and that I would be on the spot. There are all sorts of implications. I have had quite a number of people come in that way.
 - Q. How do you handle these cases?
- A. My reaction was that I could not fill a job that I did not have. I don't send project management any certain number of men. They request a certain number of men of me in certain categories. And part of my job is to see that we do not become overstaffed, that we have only the

people that the job wants. If they say, "Get eight men in a certain category", I get them eight. I don't get them seven or ten. That was a major portion [191] of my job.

Q. If a man were seeking a position such as Mr. Tuttle was seeking, would you, or did you in Mr. Tuttle's case, advise him that no job was available but for him to go up to the job and maybe he could get a job, land a position?

A. I told him that there was nothing available. I didn't tell him to go to the job or anywhere else. I told him I had nothing for him at the time. I asked him to leave his phone number and address, which he did. I told him I would contact him if and when we had a job for him.

Q. In such cases do you ask or suggest that where you have no order for men they inquire at the project site?

A. No. My job was to interview the men.

Q. After the 26th of February when did you next see or talk to Mr. Tuttle?

A. Mr. Tuttle was in two or three times in March. He was in, I would say, about the middle of March and late in March.

Q. This is in 1957, is that correct?

A. In 1957.

Q. Where did these conversations take place?

A. In the Fresno office again.

Q. In the Fresno office? A. Yes.

Q. Would you describe those meetings and conversations?

- A. Mr. Tuttle came in again, saying that he was having some [192] union difficulty. I told him again that I had no interest in that, that if we had a job for him, if he was still looking for work and still available, why, we still had his phone number and his address on file, he would be contacted at such time as an opening developed for him.
- Q. Then did you see or talk to Mr. Tuttle on any occasion after that?
- A. I called Mr. Tuttle on my mobile telephone on April the 4th, the evening of April the 4th.
- Q. You say your mobile telephone. Would you state where you were at the time you made the call?

 A. I was up at Black Rock.
 - Q. And this mobile phone, where is it located?
 - A. It is in the car that I have.
 - Q. Where did you call Mr. Tuttle?
- A. I believe I placed the call first to Friant, California, at a number he had left. He was not there, as I recall. They gave me a phone number in Fresno, a Clinton phone number, and I phoned him there the night of the 4th.
- Q. And you told him at that time—would you describe your conversation again with Mr. Tuttle at that time?
- A. I told him that a man by the name of Maples was apparently going to quit at the power house, that he had said he was getting married and was leaving. I told Mr. Tuttle that there was an opening coming up there for which we had him in mind

[193] and that I would call him again and let him know exactly what day. I told him it would be the 12th or the 13th and he would be contacted and told when to report. I called him again on the same subject the next morning. I wasn't sure whether he could hear too well. I wasn't in too good a place to telephone from. You have to be in certain locations to get clear reception on those mobile telephones.

- Q. The next morning did you call him from the mobile telephone?
- A. No. I called him from Fresno the next morning, the 5th.
 - Q. At the Fresno number?
 - A. Yes, I believe it was the Fresno number.
 - Q. And what did you tell him at that time?
- A. I told him again, I repeated what I told him the night before. And he mentioned again the union, or some problem that he was having with the union. I told him again that when Mr. Maples left, I again did not care about any connection he might or might not have with the union, my only interest was this job, and that he would be contacted, we needed him the 12th or the 13th.
- Q. When you say you didn't care what troubles he was having with the union, had the job been opened and you had offered it to Mr. Tuttle and the union refused to clear him, what would you have done?
- A. I never asked the union for him, but I would have put him [194] to work anyway.

- Q. Did you at any time advise Mr. Tuttle that it would be necessary for him to clear with the union?

 A. I did not.
- Q. Or obtain clearance from the union in order to work as a warehouseman?
 - A. I did not, no.
- Q. Mr. Wolcott, did you at any time participate in any meetings with the representatives of Teamsters Local No. 431?
- A. Yes. I participated in several meetings with them.
- Q. Would you state your recollection of these meetings?
- A. Well, the first meeting that I recall at which Teamsters 431 was represented was our pre-job conference for Kings River Constructors, just after the work had started on that project.
 - Q. When was that?
- A. The meeting was held the first or second day of November 1956, November 2nd, 1956.
 - Q. Where was this meeting held?
 - A. In Fresno, the Fresno Hotel.
- Q. Would you state as best you remember who was present or who was represented there?
 - A. Teamster representatives?
- Q. Well, let me put it this way: Would you state what unions, if any, were represented and what representatives of Kings River Constructors were at that meeting? [195]
- A. Well, there were several craft unions represented, the Laborers, the Teamsters, the Operating

Engineers, the Electricians, Plumbers and Pipe-fitters. I believe that is the basic ones.

- Q. Do you recall who were the Teamster representatives at the meeting?
- A. Al Fudge was there. I believe that Walt Biggers was. I know Al was.
- Q. And what was the purpose of this pre-job conference—was that what you called it?
 - A. Yes.
 - Q. What was the purpose of it?
- A. The purpose of that is to discuss with union officials the ways in which we would be employing our men, ways in which we expected to work with them in employing men, the qualifications of people we might be needing, the various numbers, to give them an idea of what we expected to bring in in the way of a number of people from outside sources, what we might be needing from them, to discuss the hours of work on the project, the living conditions, the meal charges, to give them an opportunity to present jurisdictional problems if they wished, to review particularly any questions that might have to do with that project, which we outlined to them, what we expected to do, how long it would take, and so forth.
- Q. Was your status or position discussed at this meeting? [196]
- A. Yes; Mr. Knack introduced me as the resident labor coordinator for this work and said that I would be handling labor relations in conjunction with project management.

Q. Mr. Wolcott, was there in effect any agreement, understanding or arrangement with the Teamsters Union wherein it was required that anyone be cleared by the union or referred by the union before being hired by the Kings River Constructors?

A. No.

Mr. Smith: Your witness.

Cross Examination

- Q. (By Mr. Yeates): Repeat your conversation, Mr. Wolcott, with Mr. Tuttle on your first contact.
- A. My first contact with Mr. Tuttle was when he came into the office, told me that he had come down from Tri-Dam, wanted to go to work as a warehouseman.
 - Q. And what was your reply?
- A. I told him that at that time I had nothing for him, that I would like to get his name and address. I asked him a little bit, as I recall, about his work, where he had worked and how long.
- Q. What other conversation did you have at that time, if any?

 A. With whom?
 - Q. Mr. Tuttle.
- A. He told me about having some trouble with the union in [197] Fresno.
 - Q. What did you say to him?
- A. I told him that I was not interested in union problems, that that was between him and the union.
- Q. And that concluded your conversation with him?

- A. That's all that I recall of it. It was very brief.
- Q. You remember those words that you state, though; you remember that part of the conversation?

 A. Which part?
 - Q. The part that you have restated here.
 - A. Yes.
 - Q. This was at your office?
 - A. Yes, my office in Fresno.
 - Q. This was your first contact with Mr. Tuttle?
 - A. Yes.
- Q. In fact, wasn't your first contact with Mr. Tuttle at the project when you saw him by the automobile?
- A. I have absolutely no recollection of meeting him at the project at any time.
- Q. On the day in question when Mr. Tuttle was up seeing Mr. Atkins, which would be on or about February 27th, you did not see Mr. Tuttle on that day?
- A. I do not recall at all seeing Mr. Tuttle on the project. The first recollection I have of seeing Mr. Tuttle is in the Fresno office. [198]
- Q. Could it be possible that you did see him at the project on that day?
- A. I can say that I have no recollection of it. And I am quite sure that I did not. I state it as emphatically as I can that I have absolutely no recollection of ever meeting him on the project.
- Q. Now, as a labor coordinator, would you, Mr. Wolcott——

- A. (Interrupting) Would you state the day again, please?
 - Q. It would be on or about February 27th.
 - A. No.
 - Q. Were you up at the project on that day?
- A. No, I don't think that I was. I believe that I was in Fresno—it's awfully hard to remember, I have been back and forth a lot, but I believe that I was in Fresno up until about Wednesday of that week, which, I think, would have been the 27th, somewhere in there.
- Q. As labor coordinator, one of your jobs is to keep and promote harmonious relations with the unions you are dealing with?
 - A. That is correct.
- Q. And you were, of course, concerned with the elimination of work stoppages or anything else which might foul up the job? A. Certainly.
- Q. And that is one reason for a pre-job conference? [199]
- A. That is correct. Some things can be ironed out ahead of time.
- Q. Now, on your pre-job conference were arrangements made with Mr. Fudge for you to be the party designated for hiring employees from, or concerned with, Local 431?
- A. Yes. People we obtained from his local, he was the man we would deal with.
- Q. So the relationship would be with Mr. Fudge and yourself? A. Primarily.

Q. So that there would be no other of the company supervisors who would——?

A. We have dealt with other people in his local, but primarily with Al Fudge.

Q. And in this pre-job conference was the matter of clearances discussed?

A. The matter of men was. Our manpower needs and that sort of thing.

Q. Was the matter of clearances discussed? Answer yes or no.

A. One craft made the statement that they would like to have their—

Q. This was from Mr. Fudge, now?

A. There was no discussion with Mr. Fudge, no—you are talking about the November 2nd pre-job conference?

Q. Yes.

A. There was no discussion with him whatever on that. Are you talking procedure or men? [200]

Q. I am talking about clearance of men.

A. No.

Q. And an oral arrangement with Mr. Fudge was never made at this pre-job conference in that regard?

A. I told him, it was said, at the meeting we would contact him, we would try to deal with him for the men that we wanted him to obtain for us, that we didn't want men in excess of what we required and that sort of thing, and that I would be the man who would be requesting the men.

Trial Examiner: Was there any understanding

reached between you and Mr. Fudge that you would hire no men in the capacities over which he had jurisdiction without calling him.

The Witness: No. There was no such discussion with Mr. Fudge.

Trial Examiner: You had no exclusive hiring arrangement with him?

The Witness: No, we did not.

- Q. (By Mr. Yeates): And if a man were hired without clearance from Fudge, did you then report it to Fudge for clearance on that gentleman?
- A. There were men hired on the job by project managers. Now, he would later, on occasion, contact some of those people on the job.
- Q. But the question I asked you, if a person was hired who had not been cleared through the union, was the union then [201] contacted and informed of this man being hired and a clearance obtained for him?
- A. They were sometimes informed that a certain man had been hired or they would contact him on the job.
 - Q. Do you recall whether Mr. Myers——
- A. (Interrupting) But I don't know whether such individuals were later cleared by Mr. Fudge or not.
- Q. Was Mr. Myers cleared by the union before coming to work?
- A. Mr. Myers was furnished us in response to a requisition from the Fresno local.

- Q. Well, was he cleared by the local before he came to work for you?
- A. I didn't see his clearance. I don't know. He was hired.
- Q. Was Mr. Ryan cleared by the union before he reported to your job?
- A. I believe Mr. Ryan's circumstances, as I recall it, were this: I was contacted by the job that he was on the way, was coming down to go to work. I advised Mr. Fudge of that, told him that if he showed up down there at the hall to go on to the job, but first to stop and see me so I could direct him to the job, but that he would then go onto the job. In other words, I told Fudge that he was a man whom either project management or district management had already made arrangements on and he was ready to go to work. [202]
 - Q. Was Mr. Ryan cleared to go to the job? Trial Examiner: You mean cleared by Fudge?
 - Q. (By Mr. Yeates): Cleared by the union.
 - A. I don't know. I don't know that.
- Q. Was Mr. Myers cleared by the union before he reported for work?
- A. I would assume definitely that Mr. Myers was. I had requested——
 - Q. I am asking you yes or no.
- A. I do not know. I have not seen his clearance, if there is one.
 - Q. Is your answer "I don't know"?
 - A. My answer has to be I don't know.

Q. That is what I wanted, yes or no, I don't know.

Were you on or about the 17th of May interviewed by a representative of the National Labor Relations Board? A. Yes, I was.

- Q. Do you recall who that man was?
- A. Mr. Albert Schneider.
- Q. Where did this interview take place?
- A. At my office in Fresno.
- Q. Did Mr. Schneider transcribe matters you gave to him in that interview?
 - A. He took notes.
- Q. And did you after these notes were taken have occasion to [203] look over the written statement?

 A. He showed it to me.
 - Q. Did you read it over?
 - A. I read it, yes.
- Q. And at the time you gave that statement was it correct, as far as you knew?
- A. I told Mr. Schneider there were some things in there that I did not agree with. He told me that if anytime I wanted to make corrections, why, that would be fine.
- Q. Now, in this statement you made to Mr. Schneider, there are corrections appearing in here. Were these corrections not made at your request?

Mr. Smith: Again I object to the question, on the basis that Mr. Wolcott has not testified that he made a statement to Mr. Schneider.

Mr. Yeates: I believe the testimony shows that

(Testimony of James Thomas Wolcott.) he read over the transcribed notes of Mr. Schneider.

The Witness: Are you referring to my unsigned statement?

Mr. Yeates: Yes.

Trial Examiner: As I understand the witness, I presume he was asked certain questions and the field examiner took certain notes in writing.

The Witness: That is correct.

Trial Examiner: And you were shown these notes?

The Witness: I was shown those notes. [204] Trial Examiner: What is the question?

- Q. (By Mr. Yeates): The question was: On the transcribed notes by the field examiner, were there not places where the corrections were made at your request?
- A. I crossed off a few words and said, "Well, this is incorrect." And he said, "Well, if you have more corrections later, I will type this up and send it to you. If you want to correct it then, why"——
- Q. But there are parts of this statement, sentences, crossed out at your request, or additions made?

 A. There may be.
- Q. And on this statement you gave to Mr. Schneider, do you recall whether or not you made pencilled checks on the border of the statement?
- A. As I recall, as I went through that there were certain, there were several things that I disagreed with, two or three of which I discussed, and he interrupted there once to say, "Well, I will type

(Testimony of James Thomas Wolcott.) this up and send it back." I told him that I wanted to check some facts some more, to review my files and to get some of this straight in my mind.

- Q. And you told him that you would prefer to have the matter seen by the company attorney before you signed it?
- A. I told him that I wanted to discuss it with our company people, that there were certainly some things in there that I wanted to review some more.
 - Q. Before you signed it?
 - A. I didn't tell him I would sign it.
 - Q. Under oath?
 - A. I didn't tell him that I would sign it.
- Q. You wanted to review these things before you signed it under oath?
 - A. I wanted to review.
 - Q. Well, answer "yes" or "no."
 - A. Yes.
 - Q. In this statement you gave, I will read you

Mr. Smith: I object to the referral of these notes as Mr. Wolcott's statement.

Mr. Yeates: How would you like them to be designated? How would you like me to call them, Mr. Smith? How would you like me to refer to them?

Mr. Smith: I would say, at the most, "the notes that the field examiner took."

Mr. Yeates: Very well.

Q. (By Mr. Yeates): On the notes the field examiner took of the conversation which you looked

(Testimony of James Thomas Wolcott.)
over, made the pencilled notes on the border, now,
do you recall in that statement—

- A. Pencilled notes on the border, I don't recall.
- Q. Pencilled checks?
- A. Yes, I think there were some checks on the border.
- Q. Do you recall whether these were put here by you? [206]
 - A. I think I put one or two in there.
- Q. Now, on these notes of the field examiner, do you recall a statement made: "In fact, Mr. Myers on February 28th, 1957, reported for work as warehouse. He was cleared through the Teamsters Union at Fresno"?

Mr. Smith: I am going to object to the reading from these notes as hearsay. I think Mr. Wolcott has not been presented these notes for personal inspection. He has not signed them. They do not constitute a signed statement. Mr. Schneider has not been called here as a witness to relate his conversation. I think it is hearsay.

Trial Examiner: Well, he is not offering the notes. As I understand, he is using them as a method of refreshing the witness' recollection.

Mr. Smith: May I ask that the witness be permitted to examine the notes?

Trial Examiner: I don't suppose Mr. Yeates would have any objection to the witness examining them.

Mr. Yeates: I have no objection; if Mr. Smith

(Testimony of James Thomas Wolcott.) wishes, I will have them identified and put in evidence.

- Q. (By Mr. Yeates) I will point to the second page of the notes from the field examiner and ask you to read that and see—
 - A. Starting with "In fact"?
 - Q. Starting with "In fact." [207]
 - A. "In fact, Mr. F. Myers"—
- Q. You don't have to read them out loud. Just read them and see if they were not in the notes at the time you looked them over.
- A. Yes, I believe that was in the statement at the time.
 - Q. And this statement was given—
 - A. Those are not my words, however.
- Q. Did you read the statement over, the notes over?

 A. Yes.
 - Q. And that was on or about the 17th of May?
 - A. Yes.
- Q. Is it your testimony now that this statement here is incorrect?
- A. Well, I have said that I assumed that Mr. Myers, if that is what you are referring to, had been cleared through the Fresno local since I called for a man from the Fresno local.

Mr. Yeates: Did you have an objection?

Mr. Smith: No.

- Q. Is that your recollection now, at the present time, of what the matter was?

 A. Yes.
 - Q. And——?

A. You mean as to what occurred or what is in there?

Q. As what occurred?

A. Yes, that is my recollection as to what occurred. [208]

Q. And not what is in the statement?

A. Right.

Q. Have you discussed the statement with Mr. Smith or the other representatives of the company?

A. Yes.

Q. Have they seen a copy of this statement?

A. Mr. Schneider furnished a copy. I haven't discussed that specific statement. I have discussed the affidavit.

Trial Examiner: Did you give an affidavit?

The Witness: Well, or the thing that was sent to us as an affidavit, but which is unsigned.

Trial Examiner: Well, it is not an affidavit, then.

Mr. Yeates: No.

The Witness: To answer your question further—

Trial Examiner: I just wanted to ascertain whether you had actually given an affidavit.

Mr. Yeates: Your attorney can bring that out when he is questioning you.

The Witness: All right.

Q. (By Mr. Yeates): Referring to the same statement, or notes, made by Mr. Schneider—I think it will probably be easier if I hand this over to you—I will call your attention to a pencilled notation in this first full paragraph of the third page

(Testimony of James Thomas Wolcott.) what are the others, that don't refer to incorrect things? What are they for?

A. Things that I wanted to review for myself. I didn't know whether he was going to leave this statement with me or what he was going to do with it at the time he handed it to me. He told me it was normal procedure to sign an affidavit. I told him I would not sign it, because there were several referrals in there to other people, there were things in there that I didn't agree with. And he said, "Well, I will have this typed up and send you back a copy and if at any time you want to correct this, rewrite it, do anything with it," he said. "That is fine, he said." On that basis, I did not review it thoroughly. I made some of the checks, and so forth, that you see there.

Trial Examiner: Did he type it up and send it back to you?

The Witness: Yes, he did.

Q. (By Mr. Yeates): Now, the checkmarks, then, you stated you made here to the parts where you felt were incorrectly stated?

A. Some of them. Or things that I wanted to review in my mind and to look over thoroughly.

Q. A checkmark appears on the statement on page 4. "On [212] April 5, 1957, I again telephoned Mr. Tuttle and talked to him about the job, but he did not seem too interested." Was that checkmark put there because you were not sure that was a correct statement?

A. That was another thing I wanted to check.

One of the things I could have added in there was a little bit more specificity as to what he meant or what I meant when I said he was not too interested in the job.

- Q. And on the first page of the statement there is a checkmark on the phrase: "The incident involving Mr. Tuttle has reference to a warehouse job at Black Rock." Was that put there because you were not certain of that?
- A. I did not agree at all with that statement. I did not say what the incident was. I did tell Mr. Schneider that we had Mr. Tuttle in mind for a job at Black Rock relative to this April the 4th telephone call. That is not my statement. That statement is not mine.
- Q. "The incident involving Mr. Tuttle has reference to a warehouse job at Black Rock"?
- A. I did not mention the incident. That was on the piece of paper when it came back, that Mr. Schneider handed to me and said, "Look it over."
- Q. At that time it was in your mind that this did not refer to Black Rock?
- A. I did not state what the incident was. [213] In fact, I specifically asked him.
 - Q. Just answer "yes" or "no."
 - A. I am trying to answer.
 - Q. Just answer "yes" or "no."

Trial Examiner: Do you understand the question he is asking you?

The Witness: Well, I have lost it now.

Mr. Yeates: All right.

- Q. (By Mr. Yeates): At the time of this statement was it your understanding or did you feel that this did not refer to the Black Rock project, concerning Mr. Tuttle?
 - A. Repeat that once more, please.
- Q. Did you feel, or did you have a doubt that the matter we were concerned with referred to the Black Rock project?
- A. Yes, I did have a doubt. I didn't know what matter he was concerned with.
 - Q. Did you feel that it—
 - A. I asked him and tried to find out.
 - Q. Did you feel it went to the Wishon project?
- A. The only reason Black Rock got in there, so far as I know, is my own reference to the April 4th—I did not start off and tell him what incident he was talking about. I was trying to find out what the charges were and why, and he would not tell me. He gave me the general statement of what was in the complaint, but he would not pin it down to a specific [214] situation, specific jobs or specific times.
- Q. So you feel that the statement: "The incident involving Mr. Tuttle has reference to a warehouse job at Black Rock" was incorrect?
 - A. As it is used there. Which page are you on?
- Q. I am on the first page. Now, what would you say——?
 - A. Those were not my words and——
- Q. Will you tell the Trial Examiner what would be your words on that matter?

- A. This whole thing would not be my words. I mean, this was written by another man, as a result of a conversation I had with him.
 - Q. Which you read over?
- A. And one of the reasons I refused to sign it, and told him, that those were not my words.
- Q. Did you ask for the paper to be returned to you?
- A. He said he would type it up and return it. He said, "I will have to keep this one."
 - Q. But the paper—
 - A. He said he would have to keep this one.
- Q. You were informed by Mr. Schneider that this was in reference to an investigation when you made this statement?
 - A. He told me that he was making—
 - Q. Answer my question "yes" or no."
 - A. Making a pre— [215]
 - Q. Answer "yes" or "no."
 - A. Ask the question again, please.
- Q. You were told by Mr. Schneider that this statement was being taken in conjunction with an investigation by the National Labor Relations Board? A. Yes.
- Q. On the bottom of page 3 there is a statement which has been inked out, continuing over to the first word on page 4. I will ask you to read that inked-out portion there, just to yourself. Wasn't that inked out at your request by Mr. Schneider?
- A. Let me read the statement again. Yes, I believe it was.

- Q. So that the statement which appears there: "No man is put to work unless he obtains a clearance from the union," at your request, Mr. Schneider inked out?
- A. I believe he either read that to me—I believe, as I recall, he started to read portions of this statement to me—
 - Q. You are not answering my question.
- A. (Continuing): ——and said, "Is this correct?" And presumably he crossed it out then.
 - Q. You saw him ink it out?
 - A. I can't say that I saw him ink it out.
 - Q. Is this the check mark, yours, along the side?
- A. He was writing this, he was sitting at a table away from me. I could not see what he had in front of him. [216]
- Q. This statement here, did he ink this out of his own volition or is this a statement which you told him you did not feel was correct and you wanted it inked out?
- A. I told him it was not correct. What he did with it after that, you had better ask him. He gave me that orally, as I recall it. I don't remember seeing that in the—
 - Q. Is this—
- A. I don't remember seeing that not crossed out. I will put it that way.
- Q. Is a checkmark appearing by that phrase which has been inked out on page 3? Do you recall putting that checkmark in there?
 - A. I think that is probably mine.

- Q. Did Mr. Schneider refuse to ink out any portions of this statement?
 - A. We didn't go over—
 - Q. Answer me "yes" or "no."
- A. I can't recall any specifically that he refused to ink out.
- Q. Did you feel that if you asked him to ink any of these out he would have refused, if you had asked him?
- A. I don't know, I didn't know whether he would or not.
- Q. But the statements that are appearing there in reference to Mr. Ryan, Mr. Myers and the last one I read to you concerning the normal procedure on employing are incorrect? [217]
- A. You would have to review those as individual questions if you want me to give as complete an answer as I know how to give.
- Q. The first one, in paragraph two, page 2, "Myers was cleared through the Teamsters Union of Fresno," is it your statement that that is now incorrect? Answer "yes" or "no."
- A. I believe he was cleared through the Fresno local.
 - Q. Well, will you answer "yes" or "no"?
- A. Can I answer, when I have never seen the reference slip that he would have——?
- Q. I ask you whether this statement you have in the notes——
- A. That statement was in the statement that he showed me.

- Q. Is the statement incorrect as it appears in the notes, to your recollection now?
 - A. I don't understand your question.
- Q. I am asking you, is the statement: "He, Myers, was cleared through the Teamsters Union of Fresno"—and that is what appears in the notes taken by the field examiner—is it your testimony now that that is an incorrect statement?

Trial Examiner: Of what he said?

Mr. Yeates: Of what he said.

- Q. (By Mr. Yeates): Of what you said to Mr. Schneider.
 - A. That he had been—?
- Q. "He, Myers, was cleared through the Teamsters Union of Fresno." [218]
 - A. Those are not my words.
- Q. Well, then, Mr. Wolcott, answer me "yes" or "no." To your recollection of it now, is that the statement you gave to Mr. Schneider.
 - A. That is the thought, yes.
 - Q. That is the thought?
 - A. That is the thought.
 - Q. Is the statement, itself, incorrect?
 - A. As to what I told him at the time?
 - Q. Yes.
 - A. I don't say that is incorrect, no.
 - Q. Could it be correct? A. It could be.
 - Q. All right. Now, on page 3, paragraph 1: "This man, Ryan, was cleared through the Teamsters Union of Fresno." Is it your testimony at this

(Testimony of James Thomas Wolcott.) time that that is an incorrect notation of the statement you gave to Mr. Schneider?

A. There again, I believe that is the thought.

Q. Well, could it be correct, then?

A. You are talking strictly from what happened at the time this was prepared, I assume. Am I correct?

Q. I am stating: The statement as represented in the notes of Mr. Schneider, in reference to that matter, could that then be correct?

A. That could be correct. [219]

Q. All right. And on paragraph 3 of page 3, which you looked over: "In some cases employees are put to work before clearance. I then arrange for clearance with the union local at Fresno. Usually, before an employee reports to work, he first goes to the union and obtains a clearance slip." Now, the same question as to the other two, I again ask you with reference to this statement.

Trial Examiner: In other words, is that what he told the field examiner.

Q. (By Mr. Yeates): Is that statement appearing in those notes, is it your testimony at this time that that is incorrect—?

A. May I ask you one general question?

Q. First, let me ask you this question—

Mr. Smith: Let me interject at this juncture. I think it is getting somewhat argumentative, even for impeachment purposes. The witness has testified to each of these questions and to each of the statements that—I should say he has testified as

(Testimony of James Thomas Wolcott.) to the subject matter of each of the statements that Mr. Yeates is referring to. Now, Mr. Yeates is referring to statements which are not in evidence here. And——

Mr. Yeates: Mr. Trial Examiner, if Mr. Smith likes, we will put these in evidence, if that is his objection to the matter?

Trial Examiner: Had you finished, Mr. Smith? Mr. Smith: I want to point out that they are not in evidence. Mr. Wolcott is being cross examined, so to speak, as to matters that are not in, that were not asked him on his direct certainly.

Trial Examiner: Well, I think the line of inquiry is a proper one, if that is what you are getting at.

Mr. Smith: Is improper?

Trial Examiner: Is a proper one, as a test of the witness's credibility.

Mr. Smith: For impeachment purposes?
Trial Examiner: Yes. I think it is proper.
Something seems to be troubling the witness.

The Witness: I am bothered by the fact that here is a statement which a field examiner hit me cold with. I knew of the complaint, which I did not get an opportunity to review, thoroughly review, before—

Trial Examiner: Wait a minute.

Mr. Yeates: I think these are self-serving statements that he is making.

Trial Examiner: Just a minute. That is all a matter that your counsel can argue.

The Witness: All right.

Trial Examiner: All that I think you are being asked for right now is did you make this statement to the field examiner. [221]

Isn't that what you are asking him, Mr. Yeates? Mr. Yeates: Yes.

The Witness: I have tried to say, those are not my words.

Trial Examiner: Well, then you got down to this last statement. Will you reframe your question on the last statement and let's try to get it settled.

You are not being asked, as I understand it, at this time whether this is a true statement of fact. You are being asked did you say this to the field examiner.

That is what you are asking him, Mr. Yeates?

Mr. Yeates: I am asking him is it his testimony at this time that the statement which I have read to him from the notes of the field examiner and as he reports them is correct.

Trial Examiner: Incorrectly reported, you mean, by the field examiner?

Mr. Yeates: Incorrectly reported, that is right, incorrect, the statement that I have read to him——

Trial Examiner: Let's make this distinction. I think the witness is a bit confused. Are you asking him if that is a correct statement of fact or are you asking him—and this is a different proposition—"is this what you said to the field examiner?"

Mr. Yeates: I am asking him if it is his testimony at [222] this time that the statement I have read to him from the field examiner's notes is an incorrect statement.

Trial Examiner: Of fact?

Mr. Yeates: Of fact.

The Witness: Yes, it is an incorrect statement of fact. And incidentally, this——

Trial Examiner: You will have to keep to the responses to the questions you are asked. And a witness does not volunteer. You are represented, of course, by able counsel.

The Witness: Thank you. I am sorry.

Trial Examiner: If the witness doesn't understand a question, he should always say he doesn't understand a question, of course.

The Witness: That, sir, was exactly my point at the time he brought it out, or you brought out the fact versus—

Trial Examiner: We don't want any witness confused, and I am sure Mr. Yeates is not intending to confuse you. If you don't understand the question, just tell me and we will clear it up, we will clarify it.

The Witness: At the time this discussion took place with Mr. Schneider, and now——

Q. (By Mr. Yeates): Your testimony at this time is that this statement which was reported in the notes of Mr. Schneider, which I have read to you and which you read at the time he gave it to

(Testimony of James Thomas Wolcott.) you, in these notes which were taken by him, is

incorrect? [223] A. Now?

Q. Yes.A. As a fact, now?Q. Yes.A. Yes, they are incorrect.

- Q. And was it incorrect at the time you gave these notes—or these notes were taken by Mr. Schneider?
- A. Could I ask how you—what is your question?
 - Q. You answer "yes" or "no."

A. That question I cannot understand.

Mr. Yeates: Will you read the question back to him?

(The reporter read as follows: "Question: And was it incorrect at the time you gave these notes—or these notes were taken by Mr. Schneider?")

Trial Examiner: An incorrect statement of fact? The Witness: As it exists in my——

Q. (By Mr. Yeates): Do you understand what the question is now?

A. I don't understand what the question is now, and what it refers to.

Mr. Yeates: Read it again, Mr. Reporter.

(The reporter re-read as follows: "Question: And was it incorrect at the time you gave these notes—or these notes were taken by Mr. Schneider?") [224]

Q. (By Mr. Yeates): Mr. Wolcott, you stated in your testimony that it is your testimony now that this statement I have read to you from the (Testimony of James Thomas Wolcott.)
notes of Mr. Schneider is incorrect. We are referring to the statement: "In some cases employees are put to work before clearance. I then arrange for clearance with the union local at Fresno," et cetera. Is it your testimony now that that is incorrect?

- A. Would you read it again, please?
- Q. "In some cases employees are put to work before clearance. I then arrange for clearance with the union local at Fresno. Usually, before an employee reports for work, he first goes to the union and obtains a clearance."
- A. Your question is, is that correct now, as a fact now?
- Q. You had stated prior in your cross examination that this is an incorrect statement and it is your testimony now that that is incorrect.
- A. As it exists now. It is not always correct. It happens.
- Q. Now my question is: Was this incorrect at the time Mr. Schneider took the notes?
- A. I didn't argue that particular point with him then.
- Q. Could it have been correct at the time you gave him the statement?
 - A. It might have been.
 - Q. It might have been correct.

Referring to the same notes of Examiner Schneider, there [225] is a statement: "Late in March 1957 I mentioned to Fudge that we might put Tuttle to work on the swing shift. Fudge said that

it would be fine with him." Now, do you recall that statement being in the notes of the field examiner?

- A. Yes, I do.
- Q. And I will ask you, is your testimony now that that statement appearing in these notes is an incorrect statement?
 - A. No; that is a correct statement.
- Q. Was your purpose in calling Mr. Fudge for this on Mr. Tuttle because you had known he had had disagreement with Mr. Fudge?

 A. No.
- Q. Who did Mr. Myers come as a replacement for?
- A. He wasn't a replacement. There was nobody left about that time that I can recall.
 - Q. Was there somebody going to leave?
 - A. Yes.
- Q. When was it that Mr. Sharp was intending to be transferred, going to Wishon?
- A. I don't know when he intended going. I know when he left Black Rock.
- Q. Was Myers a replacement for Sharp or was he to come because of the fact that Sharp was leaving?
- A. That wasn't discussed with me at the time that Mr. Myers was employed. [226]
 - Q. Are you the one who employed Mr. Myers?
- A. Yes. I made arrangements for him to be employed at the job.
- Q. And I have here the payroll record for Freddie Myers that states that he went to work in the week of March 3rd. That would be—you probably,

(Testimony of James Thomas Wolcott.)
Mr. Wolcott, know, looking at that, you probably know what day that might be.

A. What was your question?

Q. Could you tell me from that payroll record note there, could you tell me what date it appears that Mr. Ryan—I mean Mr. Myers—was employed?

A. It appears that he was employed or signed

up for employment February the 28th.

Q. What is the date that he reported for work?

A. I don't see how you can tell that from this. In fact, you can't tell.

Q. Doesn't it state on the hours there when he came to work?

A. This would indicate that his first day of work occurred during the week ending March the 10th. They have no time for the week ending March 3rd, which indicates to me that he was signed up. Otherwise there would be no occasion to indicate no time.

Q. I am asking you: Does this indicate when he first worked at the Black Rock project?

A. He first worked, as I would interpret this, the Monday of the week ending March 10th. [227]

Q. And are you in disagreement with that date as the working date of Mr. Myers?

A. I don't keep the payroll records, but it indicates here, this indicates to me that he started first working, put in his first physical work for us the Monday of the week ending March 10th.

Q. Would you be satisfied that that was the first day that he reported for work?

Mr. Smith: I am going to object, from the standpoint there has been no testimony that Mr. Wolcott knows when men go to work or when they leave work or anything else.

Mr. Yeates: That is not the question.

Trial Examiner: I take it, the question is this: Are you raising any question about the payroll record that you have in front of you, or do you accept that as a correct statement?

The Witness: That—?

Trial Examiner: That he went to work on or about the 10th of March.

The Witness: Yes, I accept this, that he went to work—

- Q. (By Mr. Yeates): If you were going to look up the date that Mr. Myers went to work for your own purposes, is this the record that you would refer to?

 A. No. [228]
 - Q. But you accept this as being correct?
 - A. As to what?
- Q. As to the first day that Mr. Myers worked at the Black Rock project.
 - A. It's acceptable to me.
 - Q. These are records prepared by the company?
 - A. Yes.
- Q. And on the employment of Mr. Ryan, this payroll record prepared by the company states that he first came to work in the week preceding March 31st?
 - A. It would not state when he came to work.
 - Q. Does it indicate—

I mean as such. This is a record of hours.

That he worked. If he would have worked before that time, would be have not been paid for it?

I would certainly assume so. I don't handle

the payroll. I would assume so.

Mr. Smith: I wonder if we could have a short recess, a very short recess here.

A. I am not a payroll clerk.

Trial Examiner: Well, we are right here on General Counsel's examination. If we have one, we will have to have it with his approval.

Mr. Yeates: I am almost through.

What was your question, sir? [229]

Q. (By Mr. Yeates): Would you accept that as being a correct statement of the first day that Mike Ryan worked at the Black Rock project?

A Ves.

Very well. On the role of Morrison— Trial Examiner: When was that date?

Mr. Yeates: It is in the week ending Marchhe was employed during the week ending March 31st.

The Witness: Could I ask a question, sir?

Mr. Yeates: Certainly.

The Witness: That indicates he worked the full week, starting on a Monday, and worked the full week ending March 31st. The week ends on a Sunday. So he, as I would interpret this, started work on a Monday of the week which ends March 31st.

Trial Examiner: Does that eard show the date

on which he was hired?

The Witness: It shows at 3/25/5—I believe that is correct—down in the corner.

- Q. (By Mr. Yeates): Mr. Wolcott, the role of Morrison-Knudsen in these joint ventures, where they are acting in the capacity they are acting in at Kings River and the Morrison-Walsh-Perini, in their role, they assembled the crews for that work, is that correct? They are the ones who have the duty and it is their obligation to get the work crew to perform that work? [230]
- A. Morrison-Knudsen Company is the sponsoring partner.
- Q. As the sponsoring company, it would be their responsibility to see that the crew was assembled?
 - A. Yes.
- Q. And is the equipment used in those joint ventures Morrison-Knudsen's equipment?

Mr. Smith: Objection. This has nothing to do with, that I can see, with the direct examination. It is improper cross.

Trial Examiner: I don't know as it is.

Mr. Yeates: He took him through all his qualifications.

Trial Examiner: You are correct. What I was thinking is: What is the materiality of it?

Mr. Yeates: I am trying to show the close relationship with Morrison-Knudsen in all these operations.

Trial Examiner: Is there any real question, any real issue there?

Mr. Yeates: Not in my mind, if the Trial Examiner feels that has been sufficiently covered.

Trial Examiner: I just don't see an issue there.

Mr. Yeates: I just wanted to be sure that the record was clear on showing the close relationship between Morrison-Knudsen and the joint venture in all these operations.

Trial Examiner: Has that reference against whom an order should issue, in the event an order were issued? Is that your point? [231]

Mr. Yeates: The relationship I am driving at is the relationship between Mr. Perkins and Morrison-Walsh-Perini or Kings River—

Trial Examiner: Yes, I see what you are getting at. He may answer.

The Witness: Would you restate the question.

- Q. (By Mr. Yeates): Is the equipment used when Morrison-Knudsen is sponsoring the project, or the joint venture, the equipment of Morrison & Knudsen, unless additional equipment is purchased?
 - A. Kings River Constructors?
 - Q. Yes. A. I don't know.
 - Q. In each case, locally, would it be-
- A. In each case it's got "Morrison-Walsh-Perini" or "Kings River Constructors" on the doors. That is all I know.
- Q. You are presently paid by Morrison-Walsh-Perini? A. No.
- Q. Were you at the time of the Kings River, the matter in question? A. Yes.
 - Q. Who are you being paid by now?

- A. Morrison-Knudsen Company.
- Q. Had you ever served in a joint venture before, in a capacity of labor coordinator for a joint venture, in which Morrison & Knudsen was the sponsoring company?

 A. Before what?
 - Q. Kings River Constructors. A. Yes.
- Q. During that time by whom were you paid, on the previous joint venture?
- A. I was employed by and paid by Morrison-Walsh-Perini, before the Kings River Constructors work began.
- Q. Prior to that time had you ever been engaged, or did you ever participate in, a joint venture in which Morrison-Knudsen was the sponsoring company?

 A. No.
- Q. Was it your understanding at the time you were working for Morrison-Walsh-Perini that you would again be employed by Morrison-Knudsen at some future date after that?
- A. I had no particular understanding beyond my current assignment.
- Q. You are now working for Morrison-Knudsen Company? A. Yes, I am now.
- Q. And prior to the time that you went to the Morrison-Walsh-Perini, or whatever the deal is, you were employed by Morrison-Knudsen?
 - A. Yes.
- Q. Had you known Mr. Perkins prior to February 1957. A. Yes. [233]
- Q. Had you worked with Mr. Perkins on previous projects? A. Yes. One.

Q. Where was your office in Fresno in relation to the office of Mr. Perkins during the period of the Kings River Constructors?

A. My office was at 1825 Merced Street. His

office was on the project.

Q. Did Mr. Perkins have any office at all in the office in Fresno?

A. He did for a short time before the weather

opened up and he got back to the job.

Q. Did you see Mr. Perkins at the Wishon project? A. When?

Q. During this period in question.

A. Would you state the period in question?

Q. February 1957.

A. Did I see him on the project in February?

Q. Anytime in February.

A. I don't think so. It is possible, but the weather was pretty bad then.

Q. Did you see him around Fresno at any time?

A. Yes.

Mr. Yeates: That is all.

Trial Examiner: We will have a short recess.

(Short recess.) [234]

Trial Examiner: We will resume.

Redirect Examination

Q. (By Mr. Smith): Have you a contract of employment with Morrison-Knudsen? A. No.

Q. Do you know anybody that lucky?

A. No, I am afraid I don't.

Q. When Mr. Albert Schneider, the field exam-

iner for the Board, visited you sometime in May 1957 did he advise you of the purpose of his business, or of his visit?

- A. He said he was there with regard to a charge.
- Q. Did he advise you who made the charge?
- A. Yes.
- Q. Would you state?
- A. Yes. Mr. M. E. Tuttle had made the charge.
- Q. Did he advise you against whom the charge had been made?
 - A. He said against Kings River Constructors.
- Q. Prior to Mr. Schneider's visit had you been advised that an unfair labor practice charge had been made against Kings River Constructors with respect to Mr. Tuttle?
- A. We had seen a copy of the charge, I believe, before that.
- Q. Had you seen it or had you been advised of it?
- A. I think we received a copy of the charge, itself. I had had no contact with any member of the Board, as I remember.
- Q. At the time that you first became aware of the unfair [235] labor practice charge having been filed did you call me in the Boise office?
 - A. (No response.)
- Q. Just "yes" or "no." At that time, that you first became aware that a charge had been filed.
- A. That a charge had been filed, no, I didn't call you.

- Q. At the time of Mr. Schneider's visit to you did you call me in the Boise office? A. No.
- Q. Did Mr. Schneider ask you, ever, to prepare in your own words any statement concerning Mr. Tuttle? A. No, he did not.
 - Q. Did you ever do so? A. No.
- Q. Did Mr. Schneider at the time he was making these notes advise you of the exact nature of the notes or statement he was preparing?
 - A. No, he did not.
- Q. Were these deleted words referred to by Mr. Yeates in his cross examination, these deleted words in the investigator's statement, were they your words or were they those of Mr. Schneider?
- A. They were not mine. They were his. I told him it was entirely incorrect.
- Q. Did Mr. Schneider propound the statements to you or did [236] you propound the statements to him? A. Which statements?
- Q. Did Mr. Schneider frame his questions in the form of statements, asking whether they were true or false?
- A. He asked several questions, but not as to whether they were true or false. He asked questions and took notes and later handed me the written-out form, or the written, rough form, in whatever it is there.
- Q. And you told him at that time that there were many inaccuracies?

 A. Yes, I did.
- Q. Mr. Wolcott, you have testified that you were working for both Morrison-Walsh-Perini and Kings

(Testimony of James Thomas Wolcott.)
River Constructors then, although you were on the payroll solely of Morrison-Walsh-Perini——

A. That is correct.

Q. The project manager of Morrison-Walsh-Perini was who?

A. Mr. Bert Perkins.

Q. And the project manager of Kings River Constructors was who? A. Mr. Jack DeLay.

Q. In working for two different employers and two different project managers, did Mr. Perkins at any time advise you or give you instructions with respect to Kings River Constructors?

A. No, he did not. [237]

Q. Did he have authority to do so? A. No.

Q. And did Mr. DeLay at any time advise you with respect to your employment with Morrison-Walsh-Perini? A. No.

Mr. Smith: That is all.

Mr. Yeates: No further questions.

Trial Examiner: I want to ask you a few questions. It may be repetitious. There are a few things that are not entirely clear to me.

When was the first knowledge that you had that Mr. Tuttle wanted a job on the Kings River project?

The Witness: When he came to my office.

Trial Examiner: Is it your testimony that you had no knowledge prior to that time that Mr. Tuttle was interested in securing employment?

The Witness: I had had no knowledge prior to that time.

Trial Examiner: Is it your testimony that Mr.

Perkins had not spoken to you prior to that time about Mr. Tuttle?

The Witness: I don't recall that's in the testimony, but he hadn't spoken to me. He had not.

Trial Examiner: In the hiring process of employees on the Kings River project, I believe you have testified that before anybody was hired it would be referred to you. Is that correct? [238]

The Witness: The project manager in some cases hired people. But it was coordinated, the hiring was coordinated, through me. We worked together.

Trial Examiner: If he hired somebody directly, he would inform you immediately, is that correct?

The Witness: Not necessarily, no. He was my

boss.

Trial Examiner: And he didn't have to report to you, in other words? Is that right?

The Witness: No, sir.

Trial Examiner: You have testified that when Mr. Tuttle first came to you with respect to a job on the Kings River project, you informed him at that time that there was no job opening at that time?

The Witness: I told him I had nothing for him, sir, at that time.

Trial Examiner: Did Tuttle make any reference to a specific job that he wanted or that he had in mind?

The Witness: I don't recall that he did on the first visit.

Trial Examiner: Well, let's keep this to the first visit.

The Witness: No.

Trial Examiner: Did he mention Mr. Sharp to you on this first visit?

The Witness: No, I don't recall that he did.

Trial Examiner: Incidentally, did Mr. Sharp at any time [239] speak to you about Mr. Tuttle?

The Witness: No. I don't think so.

Trial Examiner: Do you know Mr. Sharp?

The Witness: Yes, I do.

Trial Examiner: I believe you have testified that this payroll record shows that Myers was hired on February 23rd.

Mr. Yeates: I believe it was the 28th. Pardon me.

Trial Examiner: Will you take it and look at it again, just to verify that?

Mr. Smith: I was under the impression that he had testified that the date there was 3/25.

Mr. Yeates: That was Ryan.

Trial Examiner: I am talking about Myers now. Anyhow, he has the card before him now.

Mr. Smith: Excuse me.

The Witness: The date of 2/28/57 is given here by badge number.

Trial Examiner: What does that mean? I don't know what "badge number" means. What does it mean to you?

The Witness: To me, it means that he was hired that date.

Trial Examiner: Well, is a man assigned a badge number when he is hired?

The Witness: No. We didn't use badges on this project.

Trial Examiner: Why do you think that would indicate the date of his hiring? [240]

The Witness: Well, the "22857" is 2/28/57.

Trial Examiner: But why do you think coming under the head badge number, that that would indicate a date of hiring?

The Witness: I believe they put the date of hiring on these.

Trial Examiner: Do you have any independent recollection as to the date of Myers' hiring?

The Witness: He was called for.

Trial Examiner: Do you know who called for him?

The Witness: Excuse me, I am not referring to a call to me. There was a discussion of his hiring late in February and I believe that's about when he was hired. But sometimes I would make arrangements to hire a man and he might go sign in at payroll and say, "Well, I have got to go get my trailer," or "I have got other business. Can I report on such-and-such a day to go actually to work?"

Trial Examiner: What I really want to know, and I wish you would search your recollection carefully before you answer: Had you made arrangements to hire Myers before or after you saw Tut-

(Testimony of James Thomas Wolcott.)
tle? Or did you make such arrangements before
or after?

The Witness: I made those arrangements after I had first seen Mr. Tuttle.

Trial Examiner: Now, you knew, then, at the time that you made the arrangements for hiring Myers that Tuttle wanted a job, is that correct?

The Witness: He was on application.

Trial Examiner: Well, was he—

The Witness: Along with others, of course.

Trial Examiner: Can you tell me this: Whose application came first, Myers' or Tuttle's?

The Witness: Mr. Myers wasn't on application with me.

Trial Examiner: How did—

The Witness: I just wanted a—

Trial Examiner: How did Myers' hiring come about, if you know?

The Witness: (Continuing) —good worker.

Trial Examiner: How did Myers' hiring come about?

The Witness: Mr. DeLay contacted me and said, "Get me a good warehouseman." And I discussed it with Mr. Fudge. He said he had a good one. I said, "Fine. Send him up."

Trial Examiner: The question will arise then, in the mind of everybody who has anything to do with this case, knowing that Mr. Tuttle was an applicant, why did you feel it necessary to call Mr. Fudge?

The Witness: I didn't feel Mr. Tuttle was very well qualified.

Trial Examiner: Would you explain?

The Witness: Well, for one thing, his age. And also his attitude and the way he applied for the job and discussed his background. [242]

Mr. Yeates: Mr. Trial Examiner, I think this matter that you are discussing now goes outside of the matter of the general denial of the answer.

Mr. Smith: I was going to interject here that I couldn't see where it was leading. I don't think there has been an allegation in the complaint that we were selecting one workman over another or anything of that nature. And I can't see that it is entirely relevant or material.

Mr. Yeates: I think as far as—in regard to the pleading, I think there is no affirmative defense pleaded that he was not qualified for this work or that they considered him to be unqualified.

Trial Examiner: Well, Mr. Yeates, the complaint alleges that this man was denied employment because he didn't get clearance through the union. That is the substance of the complaint, is it not?

Mr. Yeates: That is right.

Trial Examiner: I am trying to find out what the facts are. Whether they are outside the actual answer or not, I still want to as far as possible find out the facts.

Then, is it your testimony that you considered that because of age and the manner of his approach (Testimony of James Thomas Wolcott.) to the matter Mr. Tuttle was not qualified for the job?

The Witness: I wasn't impressed—

Mr. Yeates: May I have an objection to that? Trial Examiner: Certainly you may have an objection.

And incidentally, anytime I ask a question it is just as if an attorney were asking a question. Anybody can object to any question. I have a bit of an advantage because I can overrule you, but you can object.

Mr. Smith: I was aware of that fact. I wasn't sure, myself, what your line of testimony was leading to.

Trial Examiner: My whole inquiry is to as far as possible try to find out what the facts are.

Mr. Smith: We have nothing to hide there. I will volunteer the statement that I believe the employer maintains throughout his employment process the right to determine the qualifications and choose and hire and fire whom he pleases.

Trial Examiner: When you hired, actually Mr. Myers was hired in preference to Mr. Tuttle?

The Witness: That is correct. I didn't feel that merely because he might have been in on application necessarily required that I hire him. We had no seniority or anything comparable.

Trial Examiner: The next time that you—well, I think we might go into the next time, but at a later time you did get in touch with Tuttle with respect to hiring him?

The Witness: Yes, I did.

Trial Examiner: What kind of job were you going to hire [244] him on on this later occasion?

The Witness: He was to be hired at Black Rock

when Mr. Maples——

Trial Examiner: Was this a different type of job from the one that you filled the first time?

The Witness (continuing): ——when Mr. Maples quit.

No.

Trial Examiner: The same type of job?

The Witness: We had, however, used up some of the men whom we tentatively had in mind.

Trial Examiner: It was still a warehouse job?

The Witness: Yes.

Trial Examiner: That you had in mind for him? The Witness: Yes.

Trial Examiner: May I ask you, then, why did you try to get in touch with him to hire him if you considered that he wasn't qualified?

The Witness: Because it was later mentioned to me by Mr. Atkins that if Mr. Tuttle was still around, he thought at that time he could use him.

Trial Examiner: Mr. Atkins spoke to you?

The Witness: Yes.

Trial Examiner: Had Mr. Atkins spoken to you about Tuttle prior to the time you first saw Tuttle? The Witness: No. [245]

Trial Examiner: But between that time and the time that you got in touch with Tuttle Atkins did speak to you, is that your testimony?

The Witness: Yes.

Trial Examiner: Did he tell you he wanted Tuttle?

The Witness: He asked if he was still around, and he said, "I believe I can use him." This was about the 15th or the middle of March, somewhere along in there.

Trial Examiner: Then you did get in touch with Tuttle?

The Witness: Yes.

Trial Examiner: With respect to giving him, offering him a warehouse job?

The Witness: Yes, offering him a warehouse job.

Trial Examiner: What happened to that? You carried it so far and then you didn't really—your testimony didn't cover what happened to this move on your part to hire Mr. Tuttle.

The Witness: After I had talked twice to Mr. Tuttle I was advised later, about the 11th or 12th of April, that the district manager of the company and the project manager of this project had decided to eliminate the night shifts, which, of course, eliminated those jobs.

Trial Examiner: And that is the reason the offer never came to anything?

The Witness: That is right. There was no job left on which I could send him. [246]

Trial Examiner: Did you at any time during this period when Tuttle's application was pending with you, did you discuss Tuttle with Fudge?

The Witness: Along about the 1st of April, when there was discussion about Mr. Maples leaving, I told Fudge that we would probably next send up Mr. Tuttle, that we still had him on application.

Trial Examiner: Was it customary for you to tell Fudge that you were going to hire somebody before hiring him?

The Witness: Not necessarily. But in this case there was the question of Mr. Maples leaving—and we sometimes discuss people on application back and forth.

Trial Examiner: What did Fudge say?

The Witness: He said something to the effect, "Well, he is your man and you pay the bill," something to that effect, "If that is your decision," or—

Trial Examiner: Did he say anything as to whether or not he would approve giving him a job?

The Witness: He said, "If you want him, that is your decision," something, I think he said, "That is fine with me," something of that nature.

Trial Examiner: Is that the first conversation you had had with Fudge with respect to Tuttle?

The Witness: Beg your pardon?

Trial Examiner: Is that the first conversation you had [247] had with Fudge with respect to Tuttle?

The Witness: I believe we discussed it briefly around the middle of March.

Trial Examiner: Let me ask you this: Did you discuss the matter of Tuttle with Fudge at any time prior to the time you hired Mr. Myers?

The Witness: No.

Trial Examiner: You are positive about that?

The Witness: Yes.

Trial Examiner: Did Perkins ever say anything to you about hiring Tuttle?

The Witness: No.

Trial Examiner: Do you have anything further of Mr. Wolcott, Mr. Smith?

Mr. Smith: I have no further questions.

Trial Examiner: Do you have anything further, Mr. Yeates?

Mr. Yeates: No.

Trial Examiner: You are excused.

(Witness excused.)

Trial Examiner: What is your pleasure, Mr. Smith?

Mr. Smith: Again I renew my motion.

Trial Examiner: Are you resting?

Mr. Smith: We are resting. I beg pardon.

Trial Examiner: You are resting?

Mr. Smith: We are resting, [248]

Trial Examiner: Do you have anything further?

Mr. Yeates: I have one question I would like to ask Mr. Tuttle.

MANFRED E. TUTTLE

a witness called by and on behalf of the General Counsel on rebuttal, having been previously sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Yeates): You are the same Mr. Tuttle who has been previously sworn?

A. That is right.

Q. Mr. Tuttle, where did you first see Mr. Wolcott in relation to the job at Black Rock project?

A. I saw Mr. Wolcott in front of the office, the general offices, at Black Rock, the first time I ever met the man.

Q. What date was that?

A. That was on or about February the 27th, 26th or 27th.

Q. Had you seen Mr. Wolcott previous to that time in his office?

A. I saw him sitting behind two or three different people the morning that Mr. Bert Perkins took me to the office. But I didn't see, talk to him nor speak to him, and he was busy with other people. Mr. Perkins gave the girl, he wrote a note with my name on it and told the girl at the office to keep me in mind for Jack's place at Black Rock.

Trial Examiner: When you saw him at Black Rock did you speak to him? Were you introduced to him?

The Witness: I spoke to him.

Trial Examiner: Were you introduced to him? The Witness: No. I wasn't introduced to him.

I was told that that was his car outside, and I was with a Mr. Dan Tracy, and Tracy sat in the car all the time I talked to him. And Mr. Tracy is in town here, with a broken leg, I believe.

Trial Examiner: You knew Mr. Tracy and Mr. Tracy knew you, is that right?

The Witness: He took me up there. I rode up in his car.

Trial Examiner: Well, was Mr. Tracy present when you saw Mr. Wolcott?

The Witness: Well, what do you mean by "present"?

Trial Examiner: I just want to know whether your name was mentioned to Mr. Wolcott or whether you were identified to him in such a manner that he would remember you.

The Witness: I identified myself to Mr. Wolcott.

Trial Examiner: In what way?

The Witness: I went up and told him that Mr. Perkins had told me to go up and take Jack Sharp's place at the warehouse. And Mr. Wolcott told me right there that Mr. Perkins had absolutely no jurisdiction over that place at all. And I said, "Well, it's peculiar to me that Mr. Perkins can take a man out of a job but can't put one in his place." [250]

Trial Examiner: That is what you said to Mr. Wolcott?

The Witness: That is what I said to Mr. Wolcott.

Trial Examiner: In other words, you were sort of questioning his authority?

The Witness: Yes. And he said, "Well, that is the way it is." And that is all the conversation we had until the next day, when I was in his office.

Trial Examiner: And it was the next day that you went to his office?

The Witness: The next day I went to his office again. That was after I had been in previously with Mr. Bert Perkins.

Trial Examiner: Excuse me, Mr. Yeates.

- Q. (By Mr. Yeates): And where did this conversation take place with Mr. Wolcott?
- A. Well, it's right in front of the general offices there, you know, their head offices at Black Rock or Haas Tunnel, or whatever you might call it.
- Q. Was there an automobile of Mr. Wolcott's there? A. Yes, there was.
 - Q. Did you see the automobile?
 - A. Yes. He was standing right in the door of it.
 - Q. What type of automobile was it?
 - A. I don't know.
 - Q. What color? Did you notice the color?
- A. No, I never even—I know that I stood by it because one [251] of the boys pointed out the car for me, to, me, and said for me to stand by it, that that was the best place to catch him.
- Q. This gentleman you talked with at that time, is that Mr. Wolcott, sitting in on this hearing?

 Λ . That is Mr. Wolcott, sitting right there (indicating).

Mr. Yeates: That is all.

Cross Examination

Q. (By Mr. Smith): But you admit, Mr. Tuttle, that you were advised on this Monday, the first time you went up to Kings River Constructors' office, you admit that you were advised that Mr. Perkins had no authority with respect to Kings River Constructors?

A. That is what Mr. Wolcott told me, that I just testified to it.

Q. And thereafter you did not seek a job from Mr. Perkins? A. Yes. Many times.

Q. You sought work with Mr. Perkins, did you?

A. I saw Mr. Perkins because I knew him, my wife knows his wife, and my wife and Mrs. Perkins were well acquainted.

Q. But he did not give you a job after that?

A. No. He told me several times just to have a little patience, he would get something for me pretty soon.

Q. And the next time you were offered employment by Kings River Constructors was on or about April 4, when Mr. Wolcott called you on the mobile phone? [252]

A. No. The next time was on or about March the 27th.

Q. Who offered you employment?

A. Mr. Atkins.

- Q. Who offered you-Mr. Atkins?
- A. Atkins called the union.
- Q. Did he talk to you? A. Who?
- Q. Atkins.
- A. No, not until I went up there. But I had had my mail forwarded.
- Q. I am asking you what Mr. Atkins asked you. Did Mr. Atkins offer you work? A. Yes.
 - Q. When?
 - A. Well, he called the union for me.
- Q. How do you know? I am asking you what—— A. He told me so.
- Q. I am asking you what Mr. Atkins—if Mr. Atkins offered you work, Mr. Tuttle.
 - A. That is right.
 - Q. When?
 - A. That was, I think, around about the 7th.
 - Q. What did he say to you? A. What?
 - Q. He offered you a job? [253]
 - A. That is right.
 - Q. What did he say to you?
- A. He said to me, "You go back down and talk to"—he says, "I called you by name"——
- Q. I am not asking you that. I am asking you if Mr. Atkins offered you a warehouse job.
 - A. That is right. He did.
 - Q. What did he say?
- A. He said, "I called you, for you personally." That is what he said.
- Q. I am not asking you whether he called somebody. I am asking you what he told you.

A. You asked me whether he offered me a job.

Q. Did he?

Mr. Yeates: I think this is argumentative.

Mr. Smith: It is argumentative, but it is important.

Mr. Yeates: If it is argumentative, you can tell Mr. Smith to reframe his question and have the witness answer the question, Mr. Examiner. I see no reason for the——

Trial Examiner: Mr. Smith has asked him several times.

Mr. Yeates: That is right.

Trial Examiner: Did Mr. Atkins offer you a job? Did he offer you one?

The Witness: He called for me on the phone and told Mr. Fudge— [254]

Trial Examiner: Were you there when he—

The Witness: No. I only know what he told me. But Mr. Atkins, himself, told me.

Mr. Smith: I will insist that he answer the question.

Q. (By Mr. Smith): Did Mr. Atkins, to your face or on the phone, to you, offer you a job?

A. You want to know the whole conversation, is that it?

Mr. Yeates: Mr. Tuttle, will you answer the question he has asked you?

Q. (By Mr. Smith): Did Mr. Atkins, to your face or on the telephone, offer you employment?

Trial Examiner: Did he say, "I have a job for you. Come, go to work"?

A. No, he didn't say, "Come, go to work."

Mr. Smith: That is all I want to know.

- Q. (By Mr. Smith): Did Mr. Atkins at any time to your face or in a telephone conversation—
 - A. I can answer that only—
- Q. (Continuing) ——offer you employment? Trial Examiner: Wait until the question is finished.

A. No. Not right to my face.

Mr. Smith: That is all I want to know.

The Witness: But I—

Mr. Smith: No; that is the answer.

Trial Examiner: Are you finished, Mr. Smith?

Mr. Smith: Quite, Mr. Examiner.

Redirect Examination

- Q. (By Mr. Yeates): Will you state again for the record what your conversation was with Mr. Atkins?
- A. My conversation, when I came into the warehouse, he says, "Mac, I called for you to Al Fudge personally and asked for you, and by name, and Mr. Al Fudge told me you were not eligible for any job up there." And he knew that we had had a battle.
- Q. I don't want what he knew. I just want what he said.
- A. He said, "You had a battle with Mr. Fudge and the best thing for you to do, Mac, is to go down and talk to him real nice and see if you can't

(Testimony of Manfred E. Tuttle.) get him to clear you." And I said, "Mr. Atkins, I never crawled to a union agent in my life and I am never going to." He didn't—

Mr. Yeates: I have no further questions.

Recross Examination

Q. (By Mr. Smith): You admit, Mr. Tuttle, that at no time did a representative of Kings River Constructors offer you employment?

A. No, I don't admit to any such a thing. Mr. Perkins told me the first day——

Mr. Smith: That is all.

A. (Continuing) ——that I had a job.

Trial Examiner: Well, that has been covered very extensively, I believe. [256]

Mr. Yeates: I have no further questions.

Trial Examiner: You are excused.

(Witness excused.)

Trial Examiner: Is there anything further, Mr. Yeates?

Mr. Yeates: Nothing further.

Trial Examiner: Do you want to make an oral statement on the record, Mr. Smith? You wanted to renew your motion?

Mr. Smith: I wanted to renew my motion.

Trial Examiner: To dismiss the complaint in its entirety, I take it?

Mr. Smith: To dismiss the complaint in its entirety, because I think the evidence has conclusively shown, despite expressions of opinion or what were thought to be offers of employment in this

case but were not, in fact, offers of employment by authorized representatives of Kings River Constructors; that there was, in fact, no offer of employment; there was, in fact, no job opening for which Mr. Tuttle was being considered, except the tentative offer which was made to him by Mr. Wolcott, the opening for which evaporated, you might say, upon the discontinuance of shifts on or about April 12th, 1957.

There has been no showing of a general practice or requirement or agreement between the union and Kings River Constructors requiring the clearance of anyone. There has been no [257] showing that the union, in fact, refused at any time to clear Mr. Tuttle, for, in fact, there is no showing that the union had ever been requested by Kings River Constructors to clear Mr. Tuttle.

Trial Examiner: Well, if you credit Mr. Tuttle's testimony, which he has just given before he left the witness stand this time, that Mr. Atkins told him that he had specifically requested the union to clear him and the union refused, if you credit that, you have to deal with that proposition. You can argue that I should not credit it, but let's assume that I do credit it. Then what would you do with that?

Mr. Smith: Assuming he could——

Trial Examiner: That I credit him, that Mr. Atkins told him that.

Mr. Smith: Well, this is assuming for purposes of argument.

Trial Examiner: That is right. Merely arguendo.

Mr. Smith: That the statement attributed to Mr. Atkins, which Mr. Atkins, himself, denied——?

Trial Examiner: I am saying it is arguendo.

Mr. Smith: Right. Had any business calling Business Agent Fudge and could on his own, without more, ask Mr. Fudge to clear Mr. Tuttle——?

Trial Examiner: I think, Mr. Smith—

Mr. Smith: Still there is nothing in the record to say [258] that there was at that time immediately a job opening and that Mr. Tuttle would have been offered the job and have been hired by Mr. Atkins for the job.

Trial Examiner: Of course, too, I suppose there is a question of whether Mr. Atkins had any authority whatsoever to hire anybody on his own or to call the union office with reference to clearance. What is the evidence on that point?

Mr. Smith: I think the evidence clearly shows that Mr. Atkins made all requests for employees through Mr. Weatherman, the office manager, which were then referred to Mr. DeLay, the project manager, and then back either through Mr. DeLay or through Mr. Weatherman to the labor coordinator. The labor coordinator was the only man authorized to deal directly with the union in any dealings that he might have with the union.

Trial Examiner: Of course, I will ask Mr. Yeates for his view on those same points.

Mr. Smith: Yes. The labor coordinator is the only man who makes a direct offer of employment in most cases, that is, the only other man than the project manager.

In further argument, not restricted to the one point we have just discussed——

Trial Examiner: Oh, yes. I just thought that was a point that somebody should give a good deal of attention to.

Mr. Smith: Certainly. And we feel that certainly there has been no showing of a generalized practice, arrangement or [259] agreement existing. Therefore, we submit that in order for the counsel for the General Counsel to make out his case, he must have proved not just the assumption of the charging party, or the statement made by the charging party, but he must have proved that the union, in fact, did refuse to clear Mr. Tuttle, and we submit that any such thing as a hearsay remark made through Mr. Atkins would not be sufficient to meet that proof. There must be proof that the job, of course, was open, that there was an opening and that an offer of employment was made.

Trial Examiner: I think you probably will have to prove at least one of two things. I think the burden will be on the General Counsel to show a general practice on the part of the company to require clearance through the union before hiring. I think if that general practice was shown, that might be sufficient.

Mr. Smith: Yes. But it was not.

Trial Examiner: Absent that showing, I am not making any comment on what I think the evidence has shown. Absent that showing, of course, I think that the burden will be on General Counsel to show that Tuttle would have been given a job, except

that the union refused him clearance. I think the General Counsel's burden will be to prove one point or the other, at least.

Mr. Smith: That is our feeling, too.

Trial Examiner: I think, Mr. Smith, that people reading [260] the record will have questions in their minds. Here is Tuttle. He has been with the company for some long time. There was no showing that he was incompetent. The only showing with respect to qualifications, or reflecting on his qualifications, is the showing that he is 70 years old. And here he was wanting a job and, if his testimony is credited, I think there is nothing to the contrary on the point, Sharp, who was leaving the company, was trying to promote him into the vacancy to be made by Sharp's transfer, and apparently Atkins was perfectly willing to have him. So the question will arise: Well, why wasn't the man given a job? What was wrong there? Why didn't he get the job? I think that those are the sort of questions that people are going to ask in reading the transcript of this proceeding.

Mr. Smith: Well, if they are going to read between the lines and, of course, hold us responsible or guilty by implication, maybe that would come out that way. But—

Trial Examiner: Well, you shouldn't be held responsible on mere conjecture or mere suspicion. It would have to be at least on a reasonable inference.

Mr. Smith: But in each case, though it may not clearly show in the record, each job opening was filled by a man whom the project management had specifically requested or wanted. Now, that is each job opening during this time.

Trial Examiner: No, I don't believe that—

Mr. Smith: I don't think it is in the record too clearly. I grant you that.

Trial Examiner: I believe Mr. Wolcott's testimony was that nobody had recommended Myers, that Myers was hired through the union, by calling on the union to supply a man. That is the way I understood his testimony.

Mr. Smith: Of course, we submit, too, again, as I mentioned before, that there has been no showing, there is nothing in the complaint which alleges that, or in the testimony which attempts to establish, that Mr. Tuttle should have been hired rather than another man.

Trial Examiner: Outside of union affiliation, it is none of our business who the company hires. The company is the sole judge of qualifications. You are entirely right to determine the qualifications.

Mr. Smith: That is right. Or that there is any waiting list or anything like that involved.

Trial Examiner: No, I don't think so.

Mr. Smith: I do at this time make a specific motion with respect to paragraphs of the complaint, if that is in order.

Trial Examiner: Yes. I suggest, what you want to do is make your motion complete and specific, I think, just to have it apply to each and every allegation of the complaint not admitted, that is, outside of the commerce allegations, let you move to dismiss separately. Isn't that what you want to do? [262]

Mr. Smith: I move to dismiss separately, yes. And I want to point out with respect particularly to paragraph VII of the complaint, being an allegation of general practice or arrangement applying to all employees, that the proof has not been met. I believe that, in fact, there is no particular allegation in the complaint of any acts which would constitute a violation of Section 7 of the Act, and also of Section 8 (a) (1) of the Act. And I, of course, move that that paragraph of the complaint be stricken.

Trial Examiner: Well, your motion will be considered. Your motion will go as to that paragraph and all of the paragraphs specifically alleging an unfair labor practice.

Mr. Smith: Well, if you were not disposed to grant the general motion at this time, I would like a separate ruling on paragraph VII.

Trial Examiner: All right.

Do you wish to be heard on the motion, Mr. Yeates?

Mr. Yeates: Just very briefly.

I am not going to deal with the facts because I think the record is best illustrative of that. I want to just point to the testimony of Mr. Maples, which was that he was hired directly by Mr. Atkins, and also Mr. Atkins' testimony of the fact that he called Los Angeles on his own for particular employees certainly shows that he was in a position [263] of considerable authority with the company.

As far as the responsibility of the company for statements by Mr. Atkins, I would just cite the Drico Industrial Corporation at 115 NLRB, page 931, and the authorities cited in that decision.

Trial Examiner: That is a holding, I take it— Mr. Yeates: Responsibility for the conduct of

others by the company.

Trial Examiner: That would hold certainly as to an 8 (a) (1) statement. If Mr. Atkins had made an 8 (a) (1) statement, coercive statement, of course the company would be bound by that, but would it be bound by some statement of Mr. Atkins with reference to hiring if it were shown that Mr. Atkins had no authority in the matter of hiring?

Mr. Yeates: General Counsel's contention is that it would. Of course, we are not contending that he didn't have authority, but arguendo, I would say that as far as employees who worked under him and in that area, Atkins was a supervisor as defined by the Act and, as such, he had effective authority to hire and fire, and any secret limitations of that authority pursuant to some little tied-up arrangements between the company and Atkins or the union and the company on that, I say, do not extend to the employees so as to prevent any statements of that from being violative of the Act.

And I call your attention, Mr. Examiner, to the decision of the Ninth—or in the Third—Third Circuit, NLRB-Local 369 of [264] the Hod Carriers, 39 LRRM 2142, enforcing a Board order, stating that on these matters your record is not going to

be explicit on the fact that a fellow was told, "No, we have an arrangement with the union and we can't hire you," that has to speak from the facts as they show the application, what happened to the application and the facts surrounding that, and I think on that contention, that is, General Counsel's contention is that he was denied employment because he could not clear through the union, and that, secondly, there was a general practice of the company and the union that they would clear people through the union, and if a person could not clear through the union, if they were persona non grata with the union, the company did not hire them. And I think that—

Trial Examiner: You think the general practice is established on the basis of Tuttle's testimony as to what Atkins told him?

Mr. Yeates: No. I think it is much more strongly emphasized by the information obtained from Mr. Atkins by Mr. Schneider and——

Trial Examiner: You don't mean Mr. Atkins, do you?

Mr. Yeates: The one by Mr. Atkins, first, and then the statement by Mr. Wolcott to Mr. Schneider. And I will leave the matter to the record, as to what it shows. But it is our contention that it shows that there was, in fact, some arrangement [265] and a procedure followed. And furthermore, that there were two openings. There was the Sharp transfer, which, the testimony shows, everybody knew that that was coming up. There was the Myers termination in which he was replaced by Ryan.

And there were job openings that occurred at the time when the application of Tuttle was in. I feel, in line with the Swinnerton-Walburg case, as I have already said, with the practice that was being conducted by the company and the union, that irregardless, he could not have worked for the company.

Trial Examiner: What about the testimony that he was actually called with respect to a job opening? Would you attribute any significance to that?

Mr. Yeates: Afterthought. I think that at that time the company was aware they were going to be involved in a matter and that they were trying to cover their tracks as best they could at that time.

Trial Examiner: Had a charge been filed at that time?

Mr. Yeates: No, a charge had not been filed. But this is a sophisticated company. They have dealt with these unions and this type of thing a good many times in the past.

Trial Examiner: Do you have anything that you want to add, Mr. Smith, to the oral exchange here?

Mr. Smith: I thought we had established that our company was hardly sophisticated, or we [266] wouldn't have been here in the first place. That is our reason for having a job.

Trial Examiner: You deny the charge of sophistication?

Mr. Smith: Anybody in Idaho can't claim to be sophisticated.

Mr. Yeates: My slip, what is it, on the wrong side of the sheet——?

Trial Examiner: Well, we don't want to get into undercover matters here.

Mr. Yeates: At this time I would like to make a motion that the pleadings conform to the proof as established at the hearing.

Trial Examiner: Well, you may as to matters of no substantive effect, dates, spellings, and so on.

Mr. Yeates: Yes, that standard motion.

Trial Examiner: So far as I know, nobody has ever been prejudiced by its granting.

Do you object to it, Mr. Smith?

Mr. Smith: I would like to test it.

Trial Examiner: I will reserve ruling on your motion, Mr. Smith, all of them, until I have studied the transcript. I will grant General Counsel's motion to conform.

What about filing briefs?

Do you care to file a brief, Mr. Smith?

Mr. Smith: I think so. [267]

Trial Examiner: All right.

Mr. Smith: And we would like plenty of time after receipt of the transcript.

Trial Examiner: Well, I can't give you too much time, but I can give you 30 days.

Mr. Smith: I think 30 days would be sufficient, provided we get the transcript within 10 days.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Then, I will allow 35 days from the close of the hearing here today for the receipt of briefs, which should be addressed to me, William E. Spencer,

Trial Examiner, Division of Trial Examiners, NLRB, 630 Sansome Street, 206 U. S. Appraisers Building, San Francisco. If you get all of that address correct, I should get the briefs, and I would be glad to have them, be glad to consider them.

If you care to file one, Mr. Yeates, I will be glad to have that, too.

Thank you for your courtesy and cooperation. The hearing is closed.

(Whereupon, at 12:50 o'clock, p.m., Tuesday, February 25, 1958, the hearing in the above-entitled matter was closed.) [268]

Certificate

This is to certify that the attached proceedings before the National Labor Relations Board for the Twentieth Region in the matter of Morrison-Knudsen, Inc. Henry J. Kaiser, and B. Perini & Sons, d/b/a Kings River Constructors, and M. E. Tuttle, an individual, Case No. 20-CA-1288, Fresno, California, February 24-25, 1958, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

FRANK J. McCABE,
Official Reporters,
/s/ By VERNON TELLER,
Field Reporter.